

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Millennium Pipeline Company, L.P.	Docket Nos. CP98-150-000, CP98-150-002, CP98-154-000, CP98-155-000, and CP98-156-000
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Columbia Gas Transmission Corporation	Docket No. CP98-151-000
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INTERIM ORDER

(Issued December 19, 2001)

In this proceeding, Millennium Pipeline Company, L.P. (Millennium) proposes to construct and operate pipeline facilities to provide additional natural gas service into the northeastern United States, specifically the New York City metropolitan area. In a companion application, Columbia Gas Transmission Corporation (Columbia) proposes to abandon jurisdictional natural gas facilities and to lease a portion of Millennium's newly constructed capacity.

These proposals were met with significant opposition from local land owners, elected officials, and competing pipelines. The majority of these challenges center on whether there is a need for the project, public safety, and land use issues. This order finds that the proposed facilities are in the public interest because they will provide fuel for needed electric generation, help relieve constraints on other area pipeline systems, and accommodate anticipated long-term growth in northeastern markets.

We are mindful that the development and construction of pipeline facilities in congested and heavily populated areas such as the northeast, in general, and the New York City area, in particular, present significant environmental challenges. We must, however, balance these considerations with our overriding responsibility to insure the timely development of an adequate energy infrastructure, particularly in large

employment and population centers such as New York City. While there are environmental impacts associated with the proposals, we find that in most cases they can be adequately mitigated or are temporary in nature. In addition, after lengthy and intensive study, we find that there is no preferable alternative. Thus, we will authorize Millennium's and Columbia's proposals. We will not, however, authorize Millennium at this time to construct its facilities through the City of Mount Vernon, New York. Rather, we will ask Millennium to negotiate with elected officials and interested parties and citizens in Mount Vernon and to work toward reaching an agreement on a route to an interconnection with Consolidated Edison Company of New York, Inc.'s high pressure line. At the end of 60 days, we will issue a final order authorizing Millennium to construct its pipeline, including a specific route to the termination point. An alternative route through Mount Vernon may require additional consideration under the National Environmental Policy Act of 1969 and other provisions of law.

I. Background

Millennium is a limited partnership, consisting of one general partner and four limited partners, with the following ownership interests:

<u>Partner</u>	<u>Ownership Interest</u>
General Partner:	
Millennium Pipeline Management, Company, L.L.C.	1.000 %
Limited Partners:	
Columbia	47.025 %
TransCanada PipeLines USA Ltd.	20.790 %
Westcoast Energy (U.S.) Ltd.	20.790 %
MCNIC Millennium Company	10.395 %

At present, Millennium is not engaged in any activities that are subject to the Commission's jurisdiction, but it will become a natural gas company subject to the Commission's jurisdiction upon issuance of the certificate in this proceeding.

Columbia is a natural gas company that provides open-access transportation subject to the jurisdiction of the Commission. Columbia operates facilities in Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania,

Tennessee, Virginia, and West Virginia. Columbia is a limited partner in the Millennium project.

II. Millennium's Proposals

A. Overview

Millennium filed applications in Docket Nos. CP98-150-000, CP98-154-000, and CP98-155-000, as amended and supplemented, under section 7(c) of the Natural Gas Act (NGA) for certificates of public convenience and necessity authorizing it (1) to construct and operate an interstate natural gas pipeline from the border between the United States and Canada at a point in Lake Erie to a terminus in Mount Vernon, New York; (2) to provide open-access transportation services under Subpart G of Part 284 of the Commission's regulations; (3) to engage in certain activities and transactions under Subpart F of Part 157 of the regulations; and (4) to lease pipeline capacity to Columbia. In Docket No. CP98-156-000, Millennium requests a Presidential Permit and authority under section 3 of the NGA to site, construct, and operate facilities at the international border in order to import natural gas from Canada.¹

B. Facilities

In Docket No. CP98-150-000, Millennium proposes to construct and operate approximately 424 miles of primarily 24- and 36-inch diameter pipeline extending from an interconnection with facilities to be constructed by TransCanada PipeLines Limited (TransCanada) at the United States-Canada border at a point in Lake Erie through New York to a terminus in the City of Mount Vernon, New York.² Specifically, Millennium's

¹Millennium's applications were filed on December 22, 1997 and amended on June 28, 2000.

²In December 1998, TransCanada and St. Clair Pipelines (1996) Ltd. (St. Clair) requested authorization from the National Energy Board of Canada (NEB) to construct and operate 106.4 miles of pipeline from the Dawn compressor station in Ontario, Canada to the interconnect with Millennium at the United States-Canada border in Lake Erie. In a letter filed with the Commission on August 31, 2001, Millennium stated that for procedural reasons, TransCanada and St. Clair withdrew their applications, without prejudice to their right to refile the applications in the future. Millennium anticipates that TransCanada and St. Clair will file for authorization from the NEB for the upstream Canadian facilities in the event that the Commission authorizes Millennium's proposals

(continued...)

proposed pipeline will reach shore in Chautauqua County, New York and continue in an easterly direction across the southern part of the state through Chautauqua, Cattaraugus, Allegany, Steuben, Chemung, Tioga, Broome, Delaware, Sullivan, Orange, and Rockland Counties to its terminus in Westchester County in Mount Vernon. Millennium's proposed pipeline will consist of 36-inch diameter line from the interconnect with TransCanada to the Ramapo measurement and regulation station in Rockland County (approximately 373.4 miles) and 24-inch diameter pipeline from the Ramapo station to the pipeline's terminus (approximately 50.6 miles). Millennium will interconnect with Columbia, Algonquin Gas Transmission Company (Algonquin), and Tennessee Gas Pipeline Corporation (Tennessee).

Millennium's pipeline will follow the route of Columbia's existing Line A-5 from the vicinity of Columbia's North Greenwood compressor station in Steuben County for approximately 223.9 miles to the Ramapo station in Rockland County. In addition, Millennium proposes to acquire and operate approximately 6.7 miles of 24-inch diameter pipeline, known as Line 10338, extending from the Ramapo station to the Buena Vista measuring station in Rockland County.³ In this manner, Millennium will use existing utility corridors and easements to be acquired from Columbia for this portion of its overland route. Millennium also proposes to acquire and operate the following facilities from Columbia for inclusion into its system:

! approximately 10.5 miles of 10- and 14-inch diameter pipeline, known as the Milford line, extending in a southwesterly direction from Line A-5 in Rockland County to the Milford compressor station in Pike County, Pennsylvania;⁴

! the 700 horsepower Milford compressor station in Pike County;⁵

! 9.6 miles of short pipeline segments consisting of 4-, 6-, 8-, 12-, and 14-inch diameter pipeline and appurtenances in New York and Pennsylvania; and

! various metering and regulation stations and related facilities.

²(...continued)
with satisfactory and acceptable terms and conditions.

³Line 10338 begins at the end of Line A-5.

⁴The portion of the Milford line in New York is also known as Line K and the portion of the Milford line in Pennsylvania is also known as Line 1278.

⁵This compressor station consists of two 350 horsepower compressor units.

Millennium states that the capacity of its proposed pipeline is 700,000 Dth per day. The pipeline will have a maximum allowable operating pressure (MAOP) of 1,440 psig. Millennium does not propose to construct any compression facilities. The initial high pressure is necessary to drive the gas through the 424-mile length of the proposed pipeline. At the Ramapo station, Millennium's diameter decreases from 36- to 24-inches, and the pressure drops to approximately 670 psig. At the Mount Vernon delivery point, the pressure drops to 375 psig. Millennium proposes to deliver approximately one-half of its capacity by Ramapo and the remainder by Mount Vernon.

Millennium states that its proposed pipeline will be designed and constructed by Columbia. Upon commencement of the services proposed in its application, Millennium states that it will become a "natural gas company" engaged in the interstate transportation of natural gas and will be subject to the Commission's jurisdiction under the NGA.

Millennium estimates that the cost of the proposed facilities will be \$683.6 million, including allowance for funds used during construction (AFUDC). The net cost of the facilities to be acquired by Millennium from Columbia is \$21.2 million. Millennium intends to finance the total \$677.8 million of capital costs, exclusive of AFUDC, through equity contributions and project-financed debt. Based upon its capital structure and the net book value of the acquired facilities, the Millennium pipeline will be financed through \$440.6 million of debt and \$237.2 million of equity.

C. Markets

Millennium states that it held a publicly announced open season soliciting bids for capacity on its system. Subsequently, Millennium entered into binding precedent agreements with eight shippers for 464,150 Dth per day of firm capacity, which represents approximately 66 percent of its 700,000 Dth per day of capacity.⁶ The shippers are:

<u>Shipper</u>	Maximum Daily <u>Quantity</u> (Dth per day)	Term of <u>Service</u> (Years)
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⁶Millennium contends that it is negotiating with prospective shippers for the remaining 235,850 Dth per day of unsubscribed capacity. See the supplemental information filed by Millennium on November 27, 2001.

CoEnergy Trading Company	65,000	20
Engage Energy America, LLC	235,100	10
Energy USA-TPC Corp.	117,550	10
International Business Machines Corporation (IBM)	1,000	10
North East Heat & Light Company	7,500	15
PanCanadian Energy Services Inc.	25,000	10
Quantum Energy Services, Inc.	4,000	10
Stand Energy Corporation	9,000	20

Two of the shippers – CoEnergy Trading and Engage Energy – have subscribed to 300,100 Dth per day, which is approximately 43 percent of Millennium's capacity and approximately 65 percent of Millennium's subscribed capacity. CoEnergy Trading and Engage Energy are affiliates of Millennium. Specifically, CoEnergy Trading is an affiliate of MCNIC Millennium Company and Engage Energy is a marketing affiliate of Westcoast Energy. MCNIC Millennium Company and Westcoast Energy are limited partners in the Millennium project.

D. Service, Tariff, and Rates

1. Service

In Docket No. CP98-154-000, Millennium requests a blanket certificate under Subpart G of Part 284 of the regulations in order to provide open-access transportation services. Millennium proposes to provide firm transportation service under Rate Schedule FTS, interruptible transportation service under Rate Schedule ITS, and a park and loan service under Rate Schedule PAL.

2. Tariff

Millennium has included in its application a pro forma FERC Gas Tariff which, Millennium states, complies with the Commission's open access policies and, to the extent possible, with the Gas Industry Standards Board (GISB) standards applicable at the time of the initial filing.

3. Rates

a. Recourse Rates

Millennium proposes to recover all of the costs associated with its firm transportation service through a reservation charge, with lower rates proposed for longer term contracts.

Millennium states that the 10-year contract rate is based upon a conventional cost of service for the first year of operation. Millennium states that it designed the rates to provide an incentive for shippers to request longer term contracts, deriving lower rates for 15 and 20 year contracts. The 15-year rate is based on a levelized cost of service over the initial 10 years of the contract. The 20-year rate is based on a levelized cost of service over the initial 15 years of the contract. Shippers with contract terms of less than 10 years and new shippers obtaining firm service after the project's in-service date will pay a non-levelized rate. Millennium also proposes to offer interruptible transportation service at the 100 percent load-factor derivative of the maximum firm rate for 10 year contracts. The proposed rates are as follows:

<u>Contract Term</u>	<u>100 percent Load Factor Rate (per Dth)</u>	<u>Percent of Subscribed Capacity</u>
FTS Rate		
10-year Tier I	\$0.5353	82.5 %
15-year Tier II	\$0.4989	1.6 %
20-year Tier III	\$0.4745	15.9 %
ITS Rate	\$0.5353	NA
PAL	\$0.1000	NA

Millennium states that its levelized cost-of-service model for the 15 and 20 year rates is consistent with other models, with the levelized rates achieved through an iterative process, whereby the depreciation expense and associated interest on the regulatory asset are adjusted until the total cost of service is constant for each year of the levelization period. Millennium states that the deferred portion of the depreciation expense will be tracked through the creation of a regulatory asset. Each year of the levelization period, Millennium states that the difference between the straight-line depreciation expense and the levelized depreciation expense is added to or subtracted from the balance of the regulatory asset. At the conclusion of the levelization period, Millennium states that the regulatory asset is reduced to zero, which ensures that it has fully recouped its depreciation expense.

Millennium states that its rates are designed on a throughput of 714,000 Dth per day, which consists of 700,000 Dth of new transportation service plus 14,000 Dth per day

of capacity to be leased to Columbia.⁷ The proposed rates reflect a credit of \$2,000,000 for revenue from the interruptible transportation service and the park and loan service.

b. Negotiated Rate Authority

Millennium also requests negotiated rate authority for Rate Schedules FTS, ITS, and PAL. Millennium states that the negotiated rate it will charge may deviate in either form or level, or both, from the applicable maximum rate level in its tariff.

E. Capacity Lease and Exchange Agreement

As stated above, Millennium's proposed pipeline will follow the route of Columbia's existing Line A-5 in some places. In a companion application discussed below, Columbia proposes to abandon pipeline facilities in order that the Millennium facilities may be constructed in Columbia's right-of-way. In turn, Millennium requests authorization to lease up to 14,000 Dth per day of firm pipeline capacity to Columbia so that Columbia can continue to provide service to its customers (known as the A-5 shippers) that currently receive service from the facilities that Columbia proposes to abandon. Millennium and Columbia assert that the capacity lease agreement was a prerequisite to the development of the Millennium pipeline project.

Absent the lease with Columbia, Millennium states that it would have been able to provide approximately 14,000 Dth per day of additional long-haul service to its shippers. Thus, the capacity lease agreement provides that Columbia will compensate Millennium for the long-haul capacity that could not be made available to Millennium's shippers. Columbia will pay the maximum monthly firm charge under a 10-year lease agreement for an equivalent amount of firm long-haul capacity, or \$227,938 per month.

The Millennium facilities that will provide the leased capacity for Columbia will remain the property of Millennium. Columbia will use the leased capacity to provide service for the A-5 shippers under the terms and conditions of its FERC Gas Tariff, while Millennium will use the necessary provisions of its tariff to maintain operational control of the proposed facilities.

In addition, the capacity lease agreement provides that Millennium will lease capacity at no charge to Columbia prior to the completion of construction of Millennium's

⁷See the proposals in the Capacity Release and Exchange Agreement section below.

system to ensure that Columbia can maintain service to its A-5 shippers.⁸ Millennium believes that it has the authority to lease capacity in its facilities prior to the project's in-service date without Commission authority and without subjecting it to the Commission's NGA jurisdiction. Nevertheless, Millennium requests that it be issued any necessary authorizations or waivers in the event it is determined that Commission authorization is required.

Millennium and Columbia state that the proposed capacity lease agreement is consistent with other leases approved by the Commission,⁹ comports with the Commission's policy regarding capacity leases, avoids a wasteful duplication of facilities, and is in the public interest.

F. Part 157 Subpart F Blanket Certificate

In Docket No. CP98-155-000, Millennium requests authority for a blanket certificate under Subpart F of Part 157 of the regulations in order to undertake certain routine construction, maintenance, and operational activities related to its proposed pipeline.

G. Presidential Permit and Section 3 Authorization

In Docket No. CP98-156-000, Millennium filed a request for authority under section 3 of the NGA and for a Presidential Permit under Executive Order 10485, as amended, to site, construct, and operate facilities in Lake Erie at the United States-Canada border for the importation of natural gas. Millennium states that the proposed border crossing facilities will consist of 36-inch diameter pipeline with a maximum operating pressure of 1,440 psig. The border facility will be owned and operated by Millennium on the United States side of the border and by TransCanada on the Canadian side.

H. Public Convenience and Necessity

⁸ See section 1.1 of the lease agreement filed on July 7, 1998 in a supplement to the application.

⁹ Millennium and Columbia site Trunkline Gas Company and Koch Gateway Pipeline Company, 80 FERC ¶ 61,356 (1997) and Columbia Gas Transmission Corporation, 78 FERC ¶ 61,030 (1997).

Millennium has entered into eight binding precedent agreements for approximately 66 percent of the pipeline's capacity. Millennium contends that this level of support shows a strong market demand for the proposed pipeline and demonstrates that its shippers believe the pipeline is the most economic and efficient means of transporting United States and Canadian gas supplies to growth markets in New York and the northeast. Similarly, Millennium states that its sponsors have undertaken the project with the conviction that the Millennium system will provide the best west-to-east transportation link to northeast and Mid-Atlantic markets from an economic and environmental perspective. Millennium asserts that the project represents the best means of serving markets in the eastern United States from an environmental standpoint, contending that the project will use substantial existing pipeline facilities, existing rights-of-way, and utility corridors along 86 percent of its route, with no proposed construction of compression facilities. In addition, Millennium contends that the project will also afford its shippers rate certainty through use of rate ceilings, a range of market access and supply source options, and future expandability, including access to key gas storage facilities in New York, Michigan, and southwest Ontario, Canada. For these reasons, Millennium contends that its proposed project is in the public convenience and necessity.

III. Columbia's Proposals

A. Overview

At the same time that Millennium filed its application, Columbia filed a companion application in Docket No. CP98-151-000, as supplemented, for permission and approval to abandon jurisdictional natural gas facilities under section 7(b) of the NGA and for authority to lease a portion of Millennium's newly constructed capacity under section 7(c) of the NGA.

B. Abandonment Proposal

Columbia requests authority to abandon:

! Line A-5, extending from the vicinity of Columbia's Greenwood compressor station in Steuben County, New York eastward for approximately 223.9 miles through Chemung, Tioga, Broome, Delaware, Sullivan, and Orange Counties to its terminus at

Columbia's Ramapo station in Rockland, New York.¹⁰ Specifically, Columbia proposes to abandon in place a 129.8-mile, 10- and 12-inch diameter segment of Line A-5 from the vicinity of the Greenwood compressor station to the Hancock measuring station in Delaware County; to abandon by removal a 92.2-mile, 8- to 24-inch diameter segment of Line A-5 from the Hancock station to the Ramapo station; and to abandon by conveyance to Millennium a 1.9-mile segment of 12-inch diameter pipeline in Chemung County, New York.

! Line 10338, extending approximately 6.7 miles from the Ramapo station to the Buena Vista measuring station in Rockland County, New York.

! 28 measuring stations along Line A-5 used to make deliveries to Columbia's A-5 shippers.¹¹

! the Milford line, extending approximately 10.5 miles from Line A-5 in Rockland County to the Milford compressor station in Pike County, Pennsylvania.

! the 700 horsepower Milford compressor station in Pike County, Pennsylvania.

C. Capacity Lease Proposal

Columbia does not propose to abandon firm transportation service to its existing A-5 shippers as a result of the proposed abandonment of facilities to make way for the Millennium project. Rather, Columbia proposes to continue to serve those shippers by entering into a capacity lease and exchange arrangement with Millennium. For these reasons, Columbia requests certificate authority under section 7(c) to lease capacity from

¹⁰Line A-5 consists of 24-, 20-, 16-, 12-, 10-, and 8-inch diameter pipeline.

¹¹The measuring stations are identified in Exhibit Z-1, page 4, of Columbia's application. Columbia also proposes to abandon numerous small lines that serve these measuring stations including: Line AD-31 (consisting of 2.6 miles of 6-inch diameter line); Line N (consisting of 0.1 mile of 12-inch diameter line); Line A-2 (consisting of 0.7 mile of 6-inch diameter line); Line U (consisting of 0.1 mile of 4-inch diameter line); Line 1842 (consisting of 0.2 mile of 8-, 12-, and 14-inch diameter line); Line A-1 (consisting of 0.8 mile of 12-inch diameter line and 0.8 mile of 6-inch diameter line); Line A-2 (consisting of 0.8 mile of 6-inch diameter line); Line A-3 (consisting of 0.8 mile of 6-inch diameter line); and Line A-4 (consisting of 0.8 mile of 6-inch diameter line).

Millennium that will permit it to continue to provide transportation service to its A-5 shippers.

As discussed above, Columbia will compensate Millennium for the long-haul capacity that could not be made available to Millennium's shippers as a result of Columbia's leasing capacity to continue to serve its A-5 shippers. Thus, the monthly lease charge to be paid by Columbia is equal to the firm transportation charges that would be paid to Millennium under a firm contract for 14,000 Dth per day, i.e., the firm long-haul capacity that would have been available on Millennium had Columbia not required capacity to serve its existing A-5 shippers at existing levels.

Columbia states that Millennium will continue to own the facilities that will provide the leased capacity for Columbia. Columbia states that it will use the leased capacity to provide services for its A-5 shippers under the terms and conditions of its FERC Gas Tariff, while Millennium will use the necessary provisions of Millennium's tariff to maintain operational control of the proposed facilities.

Columbia's annual payments under the lease agreement will be \$2,735,388. Columbia proposes to treat the lease and exchange arrangement as an operating lease; record the projected monthly cost of \$227,938 in Account 858, Transmission and Compression of Gas by Others; and make a filing under its Transportation Cost Rate Adjustment (TCRA) to recover the costs effective with its next rate filing. In that filing, Columbia states that it will remove the net book value of the Line A-5 facilities from its rate base and record the monthly lease costs in Account 858 as operational 858 costs. Columbia projects that the abandonment of the Line A-5 facilities and lease payments to Millennium will result in a net \$3.4 million reduction in its cost of service.

D. Section 2.55(a) Activities

Columbia states that prior to the abandonment of the facilities described above it will perform certain minor construction activities under section 2.55(a) of the regulations, so that there will be no interruption of service to its A-5 shippers. Specifically, Columbia states that it will install overpressure protection equipment at a number of the measuring and regulating stations that will be conveyed to Millennium. Columbia contends that the overpressure protection equipment is necessary due to the higher MAOP of the Millennium pipeline.¹² Columbia states that this equipment will not increase mainline

¹²Columbia's Line A-5 and the related measuring stations have a MAOP of 702 to 1,186 psig, while the Millennium pipeline will have a MAOP of 1,440 psig. Columbia
(continued...)

capacity, overall deliverability, or expand service at any of the stations at which the equipment will be installed.

Because it has owned and operated Line A-5 and because the overpressure protection equipment is necessary for it to continue to serve its existing A-5 shippers, Columbia believes that it should install the equipment prior to the transfer of Line A-5 to Millennium.¹³ Columbia contends that the overpressure protection equipment will constitute a portion of Columbia's capital contribution to Millennium. While Columbia believes that installation of this equipment meets the definition of auxiliary facilities under section 2.55(a), Columbia requests certificate authorization to install the facilities in the event the Commission determines that the facilities do not qualify under section 2.55(a).

Columbia believes that no environmental assessment or impact statement is required for the overpressure equipment under section 380.4(24) of the regulations, because (1) it intends to locate the facilities completely within an existing natural gas pipeline right-of-way; (2) the land uses in the vicinity of the facilities have not changed significantly since the original facilities were installed; and (3) no construction of significant non-jurisdictional facilities is proposed.

E. Public Convenience and Necessity

Columbia contends that its customers will benefit from these proposals by receiving continued service through the new Millennium facilities without having to incur the costs of replacing the facilities in future years. In addition, Columbia states that the proposed abandonment will permit Millennium to use a portion of Columbia's existing facilities and rights-of-way which will eliminate the necessity of constructing duplicative facilities. Finally, Columbia states that it is ensuring its existing A-5 shippers continued reliability of service at existing levels through the capacity lease and exchange arrangement. Columbia states that all of these benefits will be achieved without affecting the rates paid by the A-5 shippers or its other system wide customers.

IV. Texas Eastern's and Algonquin's Lease Alternative

¹²(...continued)

states that installation of the overpressure protection equipment will reduce the pressures of deliveries from Millennium to Columbia as necessary.

¹³Columbia states that all the construction activities will be confined to its existing right-of-way.

A. Specifics of the Alternative

On June 7, 1999, in response to the draft Environmental Impact Statement (EIS), Texas Eastern Transmission Corporation (Texas Eastern) and Algonquin filed comments indicating that they have an alternative to Millennium's proposals that will avoid a majority of the significant environmental and landowner impacts. Specifically, Texas Eastern and Algonquin contend that they could satisfy the market demand for the Millennium pipeline by leasing existing and projected turn-back capacity on their systems to Millennium, or to its shippers, and by constructing approximately 111 miles of pipeline looping and replacement line and 94,440 horsepower of compression. Texas Eastern and Algonquin estimate that the cost of their proposal would be \$363 million.

Texas Eastern also states that it can, without constructing any new facilities, transport 300,000 Dth per day of gas on a firm, year-round basis from an interconnect with ANR Pipeline Company near Muncie, Indiana to Linden, New Jersey by using existing and projected turn-back capacity on its system. Texas Eastern states that this capacity could be provided directly to Millennium, or to its shippers, through a lease agreement.

Texas Eastern and Algonquin contend that using turn-back capacity is an environmentally and economically viable alternative to Millennium's proposals since fewer facilities would need to be constructed and the facilities to be constructed would be constructed in existing pipeline corridors.

B. Millennium's Response

Millennium contends that the possibility of future turn-back capacity on Texas Eastern's and Algonquin's systems does not represent an alternative to its proposals as contemplated under the National Environmental Policy Act of 1969 (NEPA).¹⁴ Millennium asserts that there is no way of knowing whether Texas Eastern or Algonquin will have turn-back capacity; whether they will be able to re-market that capacity; or, if the capacity exists, the amount, location, and rates for that capacity. Millennium also points out that Texas Eastern's and Algonquin's alternative does not provide access to the Dawn hub in Ontario.

V. Procedural Matters

A. Interventions, Protests, and Other Pleadings

¹⁴42 U.S.C. § 4321 et seq.

Notice of Millennium's applications in Docket Nos. CP98-150-000, CP98-154-000, CP98-155-000, and CP98-156-000 were published in the Federal Register on February 9, 1998 (63 Fed. Reg. 6,550). Notice of Millennium's amended application in Docket No. CP98-150-002 was published in the Federal Register on July 12, 2000 (65 Fed. Reg. 42,998). The parties listed in Appendix A filed timely, unopposed motions to intervene in Docket Nos. CP98-150-000, CP98-154-000, CP98-155-000, and CP98-156-000. In addition, the Public Service Commission of the State of New York (NYPSC) filed a notice of intervention. The parties listed in Appendix B filed timely, unopposed motions to intervene in Docket No. CP98-150-002.¹⁵

Notice of Columbia's application in Docket No. CP98-151-000 was published in the Federal Register on February 9, 1998 (63 Fed. Reg. 6,548). The parties listed in Appendix C filed timely, unopposed motions to intervene.¹⁶ The NYPSC filed a notice of intervention.

In addition to the timely interventions, we received numerous untimely, unopposed motions to intervene that are identified in Appendices A, B, and C. The untimely motions have demonstrated an interest in this proceeding and have shown good cause for seeking to intervene out of time. Further, the untimely motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the untimely motions to intervene.

Numerous parties filed protests to the applications. On March 9, 1998, Millennium and Columbia filed a joint answer to the protests. Answers to protests are not permitted under our rules.¹⁷ Nevertheless, we will accept the answers in order to ensure a complete record in this proceeding.¹⁸

Many parties filed requests for a technical conference or requests for an evidentiary hearing, or both. We will deny the parties' requests for a technical conference because a technical conference will not materially assist in the resolution of the issues involved here. An evidentiary, trial-like hearing is necessary only when material issues

¹⁵Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2001).

¹⁶Id.

¹⁷18 C.F.R. § 385.213(a)(2) (2001).

¹⁸18 C.F.R. § 385.101(e) (2001).

of fact are in dispute that cannot be resolved on the basis of the written record.¹⁹ Here, there are no material issues of fact in dispute that would necessitate an evidentiary hearing. We find that the record contains sufficient information and data to make a reasoned decision on the merits. Thus, no purpose would be served by conducting an evidentiary hearing. The requests for an evidentiary hearing are denied.

We also received many letters from the public concerning this project. Under Rule 2201 of the regulations ("Off-the-Record Communications"),²⁰ such letters could be construed as prohibited, ex parte contacts if they discuss the merits of the proceeding and are not served on all parties to the proceeding.²¹

Because of the high level of public interest in this proceeding, however, and the volume of mail the Commission has received related to this project, we will act under section 2201(e)(1)(i) to deem any letter to the Commission in this proceeding from a person who is not a party as exempt from the Commission's ex parte rule. We direct the Secretary to place all such letters in the public, decisional record and to list them on the docket sheet of this particular proceeding.

B. Request for Confidential Treatment of Precedent Agreements

Consolidated Edison Company of New York, Inc. (Consolidated Edison), National Fuel Gas Distribution Corporation, and Southern Connecticut Gas Company objected to Millennium's request for waiver of the requirement that it disclose its precedent agreements with its shippers. In a letter dated December 21, 1998, Millennium advised the Commission that it was unconditionally withdrawing all previous requests for privileged treatment of the commercial provisions of the precedent agreements with prejudice and would provide copies of the protected provisions of the precedent agreements to parties upon request. Millennium's response has rendered moot the parties'

¹⁹See, e.g., *Southern Union Gas Co v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982).

²⁰18 C.F.R. § 2201 (2001).

²¹Rule 2201 provides that ex parte documents should be placed in the public file, associated with, but not part of, the decisional record of the proceeding. The Secretary instructs the person making the ex parte communication to serve all parties on the service list with the document. In addition, the Secretary issues a public notice of the person making the ex parte communication, the date of the communication was made, and the docket number to which the communication is related.

objections to Millennium's request for confidential and privileged treatment of the commercial provisions of the precedent agreements.

C. Comparative Hearing

On February 18, 1999 and June 6, 1999, Dominion Transmission, Inc (Dominion)²² filed a supplemental protest to Millennium's proposals and comments to the draft EIS, respectively. In those pleadings, Dominion contends that we should "rationalize the myriad of applications already filed, or announced as pending, for new pipeline capacity into the U.S. Northeast" by employing a "procedural vehicle . . . similar to that employed during the Northeast Open Season."²³ Dominion, as well as other parties and commenters, request that we hold a hearing to compare Millennium's proposal with other potential projects designed to serve the same or similar east coast markets. Specifically, Dominion requests that a hearing be held to compare Millennium's proposal with Independence Pipeline Company's (Independence) proposal to construct pipeline facilities between Defiance, Ohio and Leidy, Pennsylvania.²⁴

We find no basis for establishing a comparative hearing or other procedural vehicle similar to the Northeast Open Season. In the Northeast Open Season, we were faced with, among other things, numerous competing applications to provide new transportation and jurisdictional sales service to specific new customers in the northeast. Only one pipeline was needed to provide a specified increment of service to a given customer. To determine the universe of applicants interested in serving the northeastern market, we held an open season for filing applications for new gas service for the northeast.²⁵ Once all the proposals were filed, we determined, among other things, that many of the projects appeared to be mutually exclusive and were possibly entitled to consideration in a comparative evidentiary hearing under Ashbacker Radio Corp. v. FCC.²⁶

²²Dominion was formerly known as CNG Transmission Corporation.

²³Dominion's protest at 2-3, citing Northeast U.S. Pipeline Projects, 40 FERC ¶ 61,087 (1987).

²⁴We authorized Independence's proposals in Independence Pipeline Company, 92 FERC ¶ 61,022, reh'g denied, 92 FERC ¶ 61,268 (2000).

²⁵Northeast U.S. Pipeline Projects, 40 FERC ¶ 61,087 (1987).

²⁶326 U.S. 327 (1945). Ashbacker provides that where two bona fide, timely-filed
(continued...)

The purpose of the Ashbacker doctrine is to assure that in instances where two persons file applications for a statutory license that can only be granted to one (i.e., mutually exclusive applications), both applicants are afforded their statutory right to a hearing before either one of them is granted a license.²⁷ Because in such instances the grant of a license to one of the applicants constitutes a de facto denial of the other's application, "the grant of one without a hearing to both deprives the loser of the opportunity [of a hearing] which Congress chose to give him." For an application to receive Ashbacker treatment that application should be complete and the proposal should be viable.²⁸

We find that the Independence and Millennium pipelines are not "necessarily mutually exclusive," as contemplated by Ashbacker.²⁹ The pipelines do not access identical supplies, nor do they intend to serve identical markets. While both pipelines propose to serve major markets in the northeast and mid-Atlantic, at least half of the gas transported by Millennium would be delivered to markets in the New York City area. Independence, however, will terminate at the Leidy hub in Pennsylvania and will have access to markets served by Columbia, National Fuel, Dominion, Tennessee, Texas Eastern, and Transcontinental Gas Pipe Line Corporation. In addition, while Millennium can directly serve customers in southern New York and eastern Pennsylvania, Independence can directly serve customers in Ohio and central and western Pennsylvania. Millennium and Independence also have contracts to serve different marketing companies that may provide gas to different end users in different parts of the country. For these reasons, we will not hold a comparative hearing.

VI. Discussion

Since Millennium's proposed facilities and services will be in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the

²⁶(...continued)

applications are pending before an agency and the grant of one forecloses the grant of the other or place it under a greater burden than it would have been under had it been considered at the same time as the first application, a comparative hearing on the merits of the two applications is required. 326 U.S. at 329-31.

²⁷Id. at 330, 332.

²⁸See Empire State Pipeline, 56 FERC ¶ 61,050, at pp. 61,158-59 (1991), order on reh'g, 61 FERC ¶ 61,091, at pp. 61,369-70 (1992).

²⁹See Midwestern Gas Transmission Co. v. FERC, 589 F.2d 603 (1978).

facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA. The facilities Columbia proposes to abandon are used to transport gas in interstate commerce and are subject to the requirements of subsection (b) of section 7 of the NGA.

A. Millennium

1. Public Convenience and Necessity

a. Policy Issues

In its February 18 and June 7, 1999 pleadings, Dominion contends that the Millennium project raises important policy issues that the Commission should address prior to issuing Millennium a certificate. Dominion states that these policy issues include the amount of market support needed for new pipeline construction; mitigation alternatives; the use of affiliates to support pipeline construction; and the environmental considerations for pipeline expansion projects versus green field pipeline construction.³⁰

On July 29, 1998, we issued a Notice of Proposed Rulemaking (NOPR) proposing to make changes to our policies certifying construction activities.³¹ On September 15, 1999, after evaluating the written comments to the NOPR, we issued our Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certifying new construction.³² Many of the issues raised by Dominion were examined in the Certificate Policy Statement.

In evaluating whether new pipeline construction is in the public interest under the Certificate Policy Statement, the threshold requirement for existing pipelines proposing new construction is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the proposal might have on the applicant's existing customers. We also consider

³⁰Dominion's protest at 3.

³¹Regulation of Short-Term Natural Gas Transportation Services, 63 Fed. Reg. 42,982 (August 11, 1998), FERC Statutes and Regulations, Proposed Regulations 1988-1998 ¶ 32,533 (1998).

³²Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), order clarifying statement of policy, 90 FERC ¶ 61,128, order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

potential impacts of the proposed project on other pipelines in the market and their captive customers, or landowners and communities affected by the proposal. If there are adverse effects on the interests identified above, we will evaluate the project by balancing the evidence of public benefits against the adverse effects. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

In a concurring opinion, a majority of the Commission stated that the Certificate Policy Statement would apply only to applications filed after July 29, 1998, i.e., the date the NOPR was issued. Millennium's application was filed prior to July 29, 1998. We believe that it would not be appropriate to apply the Certificate Policy Statement to Millennium, since Millennium had no notice, at the time they its application was filed, that we would initiate a review of our criteria to evaluate certificate proposals. To apply the criteria retroactively to Millennium under these circumstances would be unfair and inequitable. We will address the public interest elements in this case consistent with the requirements of the NGA. Thus, we do not believe it is appropriate to apply the Certificate Policy Statement here.³³

b. Market Demand

1. Protests and Comments

Dominion contends that basing projects on minimal market demand and projections of future increases in demand "will set the bar for certification too low." Dominion explains that the Commission's policies have handicapped existing pipelines in competing for relatively new market players who are seeking capacity while at the same time existing, traditional customers are turning back capacity. Dominion contends that new pipeline construction in the northeast has the potential in certain markets to devalue existing capacity, resulting in unsubscribed capacity on existing pipelines and increased gas costs to consumers.

³³See Midcoast Interstate Transmission, Inc. v. FERC, 198 F.3d 960, 965 (D.C. Cir. 2000) ("The new policy, however, has no bearing on these proceedings because it does not apply retroactively.")

Dominion proposes that where facilities are needed to meet increased demand, the order of preference should be: (1) through existing facilities, e.g., interruptible, released, or turn-back capacity; (2) new pipelines currently being constructed; (3) expansions of existing facilities; and (4) green field pipelines. Here, Dominion contends that existing and certificated firm and interruptible pipeline capacity, storage capacity, and liquefied natural gas peaking service should be sufficient to meet expected growth for several years.

Other commenters and interveners contend that there is no demonstrated need for the facilities proposed by Millennium. They assert that a market for additional gas in the densely populated areas of the northeast does not translate to a need to construct the proposed Millennium pipeline. They also object to the affiliate relationships between Millennium and its shippers. Generally, they assert that forming an affiliate to demonstrate a market for Millennium's service is not sufficient evidence to justify granting Millennium the right of eminent domain.

2. Millennium's Response

Millennium contends that the fact that eight shippers selected its project as the most economic and efficient means of transporting gas to growth markets in the eastern United States and have signed long-term, binding precedent agreements demonstrates that its project is required by the public convenience and necessity. Millennium alleges gas demand in the northeast is growing due to the increased use of natural gas for electric power generation, residential consumption, manufacturing processes, and industrial cogeneration. In addition to providing a needed upgrade of the existing interstate pipeline network for delivering natural gas to the northeast, Millennium stresses that its access to all major Canadian and domestic producing basins will provide consumers with an increased diversity of economical supply options.

3. Commission Response

Under our policy as it existed prior to the Certificate Policy Statement, an applicant was required to demonstrate that it had entered into long-term executed contracts or binding precedent agreements for a substantial amount of the firm capacity of the proposed facilities.³⁴ That policy was predicated on the belief that it was not in the public interest to grant a section 7 certificate for construction where no market is in evidence, since a section 7 certificate confers powers of eminent domain on the

³⁴El Paso Natural Gas Company, 65 FERC ¶ 61,276, at p. 62,270 (1993).

recipient.³⁵ Eminent domain allows the acquisition, through condemnation proceedings, of any private property necessary to construct the pipeline. Further, construction of facilities necessarily will result in some environmental disturbance. The policy applicable to this proceeding required that these factors be offset by evidence of long-term, firm commitments (i.e., 10-year contracts or precedent agreements) for a substantial amount of the pipeline's capacity before we would consider granting a certificate under section 7(c).³⁶ As it evolved, the minimum level of firm commitment that we have generally recognized as sufficient for new on-shore facilities has been 25 percent of the pipeline's proposed capacity.³⁷

Millennium has submitted eight precedent agreements with 10, 15, and 20 year terms that subscribe 66 percent of the capacity of the proposed pipeline. Thus, under the certificate policy applicable to this proceeding, we find that Millennium has sufficient market support for its proposal. Nevertheless, we will require Millennium to file executed firm contracts for capacity equal to the capacity represented in Millennium's pleadings prior to commencing construction of its proposed pipeline.³⁸

Many interveners and commenters are concerned that precedent agreements for a large proportion of the proposed capacity are with affiliates of Millennium. Under the policy applicable to this proceeding, as long as the precedent agreements are long-term and binding, we do not distinguish between pipelines' precedent agreements with affiliates or independent marketers in establishing the market need for a proposed project.³⁹

Dominion disputes this policy, contending that marketing affiliate contracts are:

³⁵Section 7(h) of the NGA, 15 U.S.C. § 717(f).

³⁶See Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); TransColorado Gas Transmission Co., 67 FERC ¶ 61,301 (1994); Texas Eastern Transmission Corporation, 60 FERC ¶ 61,138 (1992).

³⁷See, e.g., Ouachita River Gas Storage Co., 76 FERC ¶ 61,139 (1996); Steuben Gas Storage Co., 72 FERC ¶ 61,102 (1995).

³⁸See Transcontinental Gas Pipe Line Corporation, 93 FERC ¶ 61,241 (2000).

³⁹See, e.g., Texas Eastern Transmission Corporation, 84 FERC ¶ 61,044, at p. 61,191 (1998); Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 76 FERC ¶ 61,124 (1996), order on reh'g, 80 FERC ¶ 61,136, order on reh'g, 81 FERC ¶ 61,166 (1997); Transcontinental Gas Pipe Line Corporation, 81 FERC ¶ 61,104 (1997).

terminable by mutual consent, and if the business interests of the pipeline and marketing affiliates are similar one may fairly assume that they are contracts "at will" [Such contracts] do not evidence any economic risk assumption between the contracting parties . . . [and] raise substantial issues of open access compliance, shifting of costs and revenues away from the pipeline to a non-jurisdictional arena, and present the potential anti-competitive exercise of market power by the pipeline where the marketing affiliate controls the vast proportion of the pipeline's capacity.⁴⁰

Dominion's argument does not stand up under examination. Our open access conditions ensure that a pipeline cannot discriminate in favor of its marketing affiliate or other shippers that purchase gas supplies from the pipeline's marketing affiliate. In a competitive environment, the marketer still must offer its commodity at competitive prices to attract customers. The fact that marketers are affiliated with the project sponsor does not lessen the market or the marketer's need for the new capacity or their obligation to pay for the capacity under the terms of their contracts. Further, we note that transactions between pipelines and affiliated marketers are potentially subject to greater Commission regulatory oversight than transactions with non-affiliates. For example, the pipeline affiliate is subject to the standards of conduct concerning marketing affiliates in Part 161 of the regulations.

Further, while we do not have jurisdiction over non-jurisdictional companies affiliated with interstate pipelines, we can exert control over affiliated companies in particular circumstances where such action is necessary to accomplish the Commission's policies for the transportation of natural gas in interstate commerce. More specifically, if an affiliated company acts in concert with its pipeline affiliate in connection with the transportation of gas in interstate commerce in a manner that frustrates the Commission's effective regulation of the interstate pipeline, we may look through or disregard, the separate corporate structures and treat the pipeline and affiliate as a single entity, *i.e.*, a single natural gas company. In doing so, we would regulate the affiliate's activities as if the affiliate were owned directly by an interstate pipeline.⁴¹

Dominion suggests that the use of marketing affiliates for joint venture projects to construct new facilities creates a dual standard and allows new pipelines to have a competitive advantage over existing competing pipelines. Dominion maintains that a new pipeline can more easily secure the Commission's approval of market based rates by

⁴⁰Dominion's protest, Attachment A at 6.

⁴¹See Arkla Gathering Services Co., 67 FERC ¶ 61,257 (1994).

claiming that it does not have market power in a given market, while “existing pipelines must make actual market demonstrations for their own expansions, and have a much tougher test to be allowed market based rates.”⁴²

Dominion's arguments are unpersuasive. Dominion, for instance, fails to take into consideration that a new company will generally incur substantial start up costs, such as purchasing new rights of way, and that it cannot roll in these costs since it does not have an existing rate base. In any event, Dominion's contentions are speculative, since Millennium proposes cost based rates, rather than market based rates. If built, Millennium will be in the same situation as any other “existing” pipeline should it choose to propose, in a future NGA section 4 proceeding, market based rates.

For the reasons discussed above, we find that Millennium has demonstrated adequate market support for its proposals.

c. Existing Capacity

Dominion and others contend that the Commission should consider existing capacity as an alternative to Millennium's project. Dominion recommends that the Commission consider: (1) requiring existing pipelines to permit "reverse open seasons," in which shippers may turn back unneeded capacity, to alleviate the need for new construction; (2) determining the potential for long-term capacity releases under the Commission's existing capacity release program; (3) using unsubscribed capacity on existing pipelines; (4) expanding existing pipelines at lower costs; (5) using capacity on other new pipelines; and (6) creating incentives for new service providers to use existing pipelines.

The Commission's Pricing Policy Statement⁴³ requires a pipeline seeking to expand its existing facilities to determine if there is any existing capacity available on its

⁴²Dominion's protest, Attachment A at 15.

⁴³Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 (1995), order denying reh'g, 75 FERC ¶ 61,105 (1996).

system when it determines the size of its expansion project.⁴⁴ However, we do not require that applicants consider existing capacity on other pipelines.⁴⁵ While we have recognized that capacity turn back may be a problem on some pipelines or in some markets,⁴⁶ there are projections that demand for capacity will increase in the future.⁴⁷ Thus, conditions may vary from market to market, and while demand may be shrinking in some markets, with capacity turn back as a possible consequence, in other markets demand may be growing and expansion of existing capacity may be needed. The EIA has specifically stated that demand in the southeast and northeast regions is projected to grow. Under the circumstances, the mere potential that some pipelines may experience capacity turn back in the future does not persuade us in this case to retreat from the policy of recognizing evidence of market demand in the form of binding precedent agreements. Further, as we have previously stated,⁴⁸ the Commission questions the true availability of turn-back capacity because of its speculative nature. In any market where pipelines experience high load factor usage and there exists the potential for continued natural gas growth, we believe that current existing capacity will remain in demand, which renders the possibility of long-term, turn-back capacity too speculative to be a viable alternative.

d. Available Upstream and Downstream Capacity

Consolidated Edison alleges that it does not have sufficient take-away capacity at the Mount Vernon terminus of the proposed Millennium pipeline to accommodate the 350,000 Dth per day of capacity that Millennium proposes to deliver. Consolidated Edison also questions the existence of available upstream and downstream pipelines to accommodate the increased capacity.

⁴⁴Pricing Policy Statement, 71 FERC at p. 61,917.

⁴⁵See Northern Border Pipeline Company, 76 FERC ¶ 61,141, at p. 61,773 (1996), order issuing certificate and on reh'g, 80 FERC ¶ 61,152, order on reh'g, 81 FERC ¶ 61,215 (1997).

⁴⁶See Regulation of Interstate Natural Gas Transportation Services, 63 Fed. Reg. 42,973 (August 11, 1998) IV FERC Statutes. & Regulations ¶ 35,533, at p. 35,736 (July 29, 1998).

⁴⁷In the November 16, 2001 release of its "Annual Energy Outlook 2002," the Energy Information Agency (EIA) of the Department of Energy projects an increase in gas demand from 22.8 Tcf annually in 2000 to 33.8 Tcf and 34.5 Tcf annually in 2020.

⁴⁸See Independence Pipeline Company, 91 FERC ¶ 61,102, order issuing certificates, 92 FERC ¶ 61,022, reh'g denied, 92 FERC ¶ 61,268 (2000).

As noted above, Millennium has advised the Commission that TransCanada and St. Clair have withdrawn their applications before the NEB to construct the related, upstream Canadian facilities. Millennium contends, however, that the Canadian regulatory process customarily follows the Commission's approval of projects involving related Canadian facilities. In such cases, Millennium states that the Commission has consistently conditioned its approval of pipeline facilities to require receipt of all necessary NEB approvals prior to commencing construction.

With respect to downstream facilities, Millennium states that alternatives are available to the Consolidated Edison interconnect at Mount Vernon. Millennium contends that its shippers can use upstream interconnects with Columbia, Algonquin, and Tennessee, to move gas downstream from Millennium. Although Millennium believes that it will be able to deliver the entire 350,000 Dth per day to the Mount Vernon interconnect with Consolidated Edison, Millennium states that it and its shippers are willing to accept the risks of relying on Consolidated Edison for take-away capacity and service to customers in New York City.

As is our policy concerning upstream facilities, we will condition the certificate issued herein to prohibit any construction by Millennium prior to TransCanada's and St. Clair's receipt of all necessary NEB approvals.⁴⁹ As to the downstream capacity, in an October 24, 2001 letter to the Commission, Consolidated Edison states that it recognizes and supports the need for new interstate pipeline capacity in the New York City area and that it continues to pursue and discuss with Millennium issues related to any necessary interconnection of facilities. In any event, Millennium's shippers appear to be content with their range of downstream transportation options. In light of these factors, we will dismiss Consolidated Edison's concerns.

e. Green Field Pipelines

Dominion asserts that the Commission's standard for demonstrating market need should be different for pipelines proposed to be constructed in existing rights-of-way, as opposed to green field pipelines (pipelines requiring new rights-of-way). Specifically, Dominion contends that the:

[C]ondemnation privilege which inheres in all certificates should be a strong reason for the Commission to take a second look in applying related

⁴⁹See, e.g., Vector Pipeline, L.P. (Vector), 85 FERC ¶ 61,083 (1998), order on reh'g and issuing certificates, 87 FERC ¶ 61,225, order on reh'g, 89 FERC ¶ 61,242 (1999); Maritimes, 76 FERC ¶ 61,124 (1996).

policy considerations. For example, how far should the Commission go in letting a pipeline be constructed with an "at-risk" condition without improperly delegating its substantive authority under the [NGA] to the applicant? Recognizing that a certificate will allow an applicant to condemn private property, the Commission must consider with disfavor the lack of binding precedent agreements, the lack of substantial markets, or the lack of any significant markets other than the recently formed marketing affiliates.⁵⁰

Dominion also suggests that the Commission should determine if there should be different environmental considerations for existing pipeline expansion projects versus green field pipeline construction. Dominion states that:

The Commission often requires rerouting of pipelines to minimize environmental impact. Therefore, it is a small step to require the applicant to use the capacity of an existing pipeline. With the plethora of joint projects and capacity leases available or potentially available in the U.S. Northeast, applicants such as Millennium should be required to demonstrate that these alternatives were seriously pursued before proposing new green field pipelines.⁵¹

We disagree with Dominion's suggestion that there should be a higher standard to support proposals for the construction of green field pipelines. All pipeline construction projects filed with the Commission must be shown to be in the public interest to win approval and, depending on the circumstances, more may be required for a green field pipeline to the extent that it would have more significant environmental consequences or rely more heavily on eminent domain to acquire a right-of-way. As discussed below in the final EIS, we analyzed a significant number of viable environmental alternatives and determined that Millennium's proposals, as modified by our staff, were acceptable for providing the proposed service to this market area. In addition, through the extensive conditions imposed in this order, we have taken the concerns raised by interveners and commenters into account and are mitigating the adverse impacts to the greatest degree possible.

⁵⁰Dominion's protest, Attachment A at 5.

⁵¹Id. at 17.

Although NEPA establishes environmental quality as a substantive goal, NEPA does not mandate that agencies reach particular substantive results.⁵² Instead, NEPA simply sets forth procedures that agencies must follow to determine what the environmental impacts of a proposed action are likely to be.⁵³ If an agency adequately identifies and evaluates the adverse environmental effects of the proposed action, "the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs."⁵⁴ As noted elsewhere in this order, we have examined numerous alternatives, including use of existing systems (along with enhancements) and found none to be superior to Millennium's proposal. We believe that granting an existing pipeline a competitive advantage over a green field pipeline simply because it already has a pipeline in the ground is contrary to the Commission's goal of promoting competition.

f. Eminent Domain

Numerous interveners and commenters are concerned about eminent domain. They raise questions about valuation and reimbursement, including whether the pipeline could be required to make lease payments, pay annual rent, or issue company stock for use of the property. They are also concerned about damages and loss of income during construction and perceived loss of property values. Further, some interveners and commenters contend that Millennium is not a utility company and should not be permitted to use eminent domain to take private property for corporate profits.

Generally, compensation for the granting of a pipeline easement is determined as the result of negotiations between the pipeline company and the landowner. These negotiations could potentially include compensation for damage to the property or for any perceived loss of property value.⁵⁵ If an easement cannot be negotiated with the landowner, and the project has been certificated by the Commission, the company may exercise in court the right of eminent domain granted to the pipeline under section 7(h) of the NGA. In an eminent domain proceeding, the court will require the pipeline to compensate the landowner for the right-of-way, as well as for any damages incurred

⁵²Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1988).

⁵³Id.

⁵⁴Robertson, 490 U.S. at 350.

⁵⁵See, e.g., Appeal of Giesler, 622 A.2d 408 (1993).

during construction. The level of compensation would be determined by the court according to the state laws that set forth the procedures for the use of eminent domain once the Commission issues a certificate.

g. Conclusion

We believe that the benefits of the Millennium's proposed project are clear and significant. Millennium has entered into firm, long-term, binding precedent agreements for two-thirds of the pipeline's capacity. In addition, general market demand projections in the region lend support to the need for this project. Specifically, studies conducted by government, industry, and private organizations, including the EIA, Gas Research Institute, Interstate Natural Gas Association of America, and the Cambridge Energy Research Associates, forecast increasing demand for natural gas in the northeastern United States (particularly for electric generation) and the need for increased pipeline capacity to meet that demand.⁵⁶

The proposals will also diversify the range of gas supplies available to the northeast. Millennium will provide another pipeline for shippers to transport Canadian gas supplies to the region and Millennium's interconnects with Columbia, Algonquin, and Tennessee will provide access to gas supplies from domestic supply areas as well. The addition of a new pipeline in the region, with access to multiple supply areas, will expand shippers' options, promoting the growth of competitive markets for natural gas and potentially contributing to lower and more stable natural gas prices over the long term. The project will also increase the overall reliability of the region's infrastructure and offer an additional source of outage protection. In addition, the pipeline capacity created by Millennium's proposals should foster the development of more North American energy supplies. Finally, the project will allow for a greater measure of energy independence, especially to the extent new gas supplies delivered to the region by Millennium displace overseas energy supplies.

⁵⁶See "Staff Analysis of Natural Gas Consumption and Pipeline Capacity in New England and the Mid-Atlantic States," December 1999. In addition, on July 27, 2000, the NYPSC filed comments in support of Millennium's proposal, stating that the need for new pipeline capacity into New York City is critical because existing capacity is constrained. The NYPSC states that New York City needs 300 MW of in-city electric generation immediately and 200 MW each year thereafter to meet expected demand. The NYPSC also states that this new generation must be within city limits because of transmission constraints and must be almost exclusively gas-fired because of environmental guidelines.

We recognize that TransCanada and St. Clair have withdrawn their applications to construct upstream Canadian pipeline facilities. This order, however, provides that Millennium cannot begin to construct its facilities until TransCanada and St. Clair receive all necessary approvals from the NEB to construct their facilities in Canada. We also recognize that there may ultimately be a need for an expansion of Consolidated Edison's facilities at the downstream end of Millennium's system. Nevertheless, Millennium has demonstrated that a market exists for its proposals, that its shippers are aware of the operational considerations on the Consolidated Edison's system, and that its shippers are willing to take the risk and responsibility for securing delivery of their gas supplies to Consolidated Edison. In addition, as discussed below, there will be locally significant environmental impacts associated with construction of the Millennium project, particularly on the eastern-most segment of the project, extending from the Hudson River into Westchester County. However, most of the impacts are short term, occurring only during the actual period of construction, and can be mitigated extensively through the environmental conditions adopted in this order. Specifically, to address the project's expected impacts, we will require Millennium to comply with numerous special environmental conditions, including requirements for:

- ! a third-party contractor (condition 11);
- ! immediate restoration of residential properties, trails, and roads (conditions 13 and 14);
- ! construction in aquifer protection areas and public supply watersheds (conditions 18 and 19);
- ! construction in Lake Erie (condition 25);
- ! a Hudson River crossing plan within a September 1 to November 15 construction window (condition 27);
- ! a site-specific construction plan for crossing the Catskill Aqueduct (condition 28);
- ! protecting endangered species in the Hudson River (condition 32);
- ! a wetlands specialist during wetland restoration (condition 40);
- ! an environmental mitigation complaint resolution procedure (condition 43);
- ! site specific plans for in-street construction in Mount Vernon (condition 48);

! a blasting plan for the ConEd Offset/Taconic Parkway Alternative (condition 59); and

! site specific plans for construction along the ConEd Offset/Taconic Parkway Alternative adjacent to the Jane E. Lytle Memorial Arboretum, through the Teatown Lake Reservation; across the New Croton River watershed, and near residential properties (conditions 61, 62, 63, and 64).

Moreover, Millennium's route outside of Westchester County is adjacent to or within existing rights-of-way, which will significantly minimize overall environmental impacts.

Accordingly, we find that in order to meet the growing energy needs of the northeast, including the New York City metropolitan area, new infrastructure is needed to bring additional natural gas supplies to market. Millennium has demonstrated a market by entering into long-term, binding, precedent agreements for two-thirds of the project's capacity. In addition, Millennium and its shippers are willing to assume the risk associated with getting the gas to market. We conclude that Millennium's proposals are viable from an economic and environmental standpoint and can meet the needs of the expanding market on a timely basis. In assessing the viability of alternatives to Millennium's project, including Texas Eastern's and Algonquin's alternative, we have been unable to find an alternative that would not create similar disturbances to other locations, other landowners, and other environmentally sensitive areas in New York or neighboring states. Thus, we find that Millennium's proposals are in the public convenience and necessity.

Nevertheless, we will not at this time certificate a specific route for the Millennium pipeline through the City of Mount Vernon. During the course of this proceeding, the citizens of Mount Vernon raised numerous, specific concerns about pipeline construction through their community and objected to the location of Millennium's termination point at South 8th Avenue and West 4th Street. For this reason, the final EIS modified the pipeline's termination point to tie into Consolidated Edison's existing pipeline at the intersection of South 7th Avenue and West 4th Street, which would avoid construction near the Greater Centennial African Methodist Episcopal Zion Church and a neighborhood health clinic. However, in an attempt to further address the concerns of the citizens of Mount Vernon, we will ask Millennium to negotiate with elected officials and interested parties and citizens in Mount Vernon and to work toward reaching an agreement on a route to an interconnection with Consolidated Edison's high pressure line. At the end of 60 days, we will issue a final order authorizing Millennium to construct its pipeline, including a specific route to the termination point. An alternative route through Mount Vernon may require additional consideration under

NEPA and other provisions of law. To ensure that a route through Mount Vernon can be found, the parties may use the Commission's Dispute Resolution Service.

2. Rate Issues

a. Recourse Rates

Dominion questions Millennium's use of a levelized cost of service rate design. Dominion contends that Millennium has not demonstrated extenuating circumstances to warrant use of this rate design and alleges that it imposes an unnecessary competitive distortion.

In the past, the Commission has approved levelized cost-of-service rate designs, finding that they provide just and reasonable rates.⁵⁷ Such a finding is appropriate here, as modified by the discussion below, because Dominion has failed to provide any evidence that Millennium's proposal deviates from those the Commission has previously approved.

Millennium proposes to depreciate its facilities over a 20-year period, with depreciation rates consistent with the levelized cost-of-service associated with 15 and 20 year contracts, and straight-line depreciation for the 10-year contracts. Millennium also proposes that it be accorded regulatory asset treatment for the difference between its straight-line and levelized depreciation expense. We will approve Millennium's method for treating depreciation.

Millennium proposes a capital structure of 65 percent debt and 35 percent equity, with a 14 percent return on equity and a 7.5 percent cost of debt, resulting in an overall rate of return of 9.78 percent. Millennium will use project financing to obtain the non-recourse debt and the project partners will contribute the equity component of the capital structure. Millennium contends that this capital structure was chosen because it serves to lower the overall cost of capital and rates. Millennium states that it based its proposed capital structure and requested return on equity on the capital structures and returns

⁵⁷See, e.g., Alliance Pipeline L.P. (Alliance), 80 FERC ¶ 61,149 (1997); order on reh'g and issuing certificates, 84 FERC ¶ 61,239 (1998), reh'g denied, 85 FERC ¶ 61,331 (1998); Vector, 85 FERC ¶ 61,083 (1998); Portland Natural Gas Transmission System (Portland), 76 FERC ¶ 61,123 (1996).

approved by the Commission in Alliance, Portland, and Maritimes.⁵⁸ Millennium asserts these were similar projects of comparable risks, organized as limited liability companies or partnerships and using project financing.

Although it has proposed a capital structure of 65 percent debt and 35 percent equity, Millennium will not execute any financing agreements until after the Commission authorizes the project. Thus, Millennium's actual capital structure is unknown at this time. In addition, although Millennium contends that its capital structure is based on those approved for Alliance, Portland, and Maritimes, the capital structures approved in those proceedings ranged from 75 to 70 percent debt and 25 to 30 percent equity, while Millennium is proposing a capital structure consisting of 5 to 10 percent more equity, with no justification for the increase. Thus, consistent with our rulings in Alliance, Portland, Maritimes,⁵⁹ we will approve Millennium's proposed rate of return on equity of 14 percent, but require Millennium to design its rates on a capital structure of 75 percent debt and 25 percent equity which results in an overall rate of return of 9.13 percent, or .65 percent lower than that proposed by Millennium.

Our determination as to the rate of return will necessitate revisions to Millennium's proposed FTS, ITS, and PAL recourse rates. Thus, we will require Millennium to revise its rates and file these rates at least 60 days prior to its in-service date.

When Millennium files its initial rates, we will allow it to modify the cost of service and resulting rates authorized herein to the extent necessary to reflect the actual cost of debt incurred to construct the project. However, if Millennium desires to make any other changes not specifically authorized by this order prior to placing its facilities into service, it will need to file an amendment to its application under section 7(c). In that filing, Millennium will need to provide cost data and the required exhibits supporting any revised rates. After the in-service date, Millennium must make an NGA section 4 filing to change its rate to reflect revised construction and operating costs.

b. Negotiated Rates

Millennium requests negotiated rate authority for Rate Schedules FTS, ITS and PAL. We find that Millennium's proposal to offer negotiated rates generally conforms with the guidelines for negotiated rates as set forth in the Commission's Alternative Rate

⁵⁸Maritimes, 80 FERC ¶ 61,136, order on reh'g, 81 FERC ¶ 61,166 (1997).

⁵⁹See also Cross Bay Pipeline Company, L.L.C., et al., 97 FERC ¶ 61,165 (2001); Vector, 85 FERC ¶ 61,083 (1998).

Policy Statement.⁶⁰ Under that policy, as affirmed by the Commission in NorAm Gas Transmission Company,⁶¹ any revenue shortfall due to the lower negotiated rates cannot be recovered from existing shippers. Thus, our policy is to permit negotiated rates at lower than recourse rates in all cases, even to affiliates, and not only when lower rates are needed to compete for business. Accordingly, we will approve Millennium's proposed negotiated rate proposal, subject to the conditions set forth herein. In addition, consistent with NorAm, we will require Millennium to file either its negotiated rate contract or tariff sheets that reflect the essential elements of its negotiated rate agreement in sufficient detail to enable shippers that believe they are similarly situated with respect to a particular negotiated rate customer to make such a determination.⁶² In addition, Millennium's negotiated rate authority is subject to our policy protecting the recourse rate-paying shippers against inappropriate cost-shifting with negotiated rates and discount adjustments and what deviations are permitted as part of a negotiated rate agreement.⁶³ Further, we will require Millennium to maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases.

There are, however, some aspects of Millennium's proposal that must be modified to be consistent with Commission policy. Millennium's tariff provides that its negotiated rates may have individual components that exceed the maximum rate, or are less than the minimum rate, or have a rate design that is different from the one reflected in its tariff.⁶⁴

⁶⁰Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996), reh'g and clarification denied, 75 FERC ¶ 61,024 (1996), reh'g denied, 75 FERC ¶ 61,066 (1996); petition for review denied, Burlington Resources Oil & Gas Co. v. FERC, Nos. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

⁶¹NorAm Gas Transmission Company (NorAm), 77 FERC ¶ 61,011 (1996), order on reh'g, 81 FERC ¶ 61,204 (1997).

⁶²NorAm, 81 FERC at p. 61,872.

⁶³ANR Pipeline Company, 97 FERC ¶ 61,222 (2001); ANR Pipeline Company, 97 FERC ¶ 61,223 (2001); ANR Pipeline Company, 97 FERC ¶ 61,224 (2001); Tennessee Gas Pipeline Company, 97 FERC ¶ 61,225 (2001).

⁶⁴Section 1.43 of Millennium's pro forma General Terms and Conditions at
(continued...)

Millennium's tariff is also unclear as to how it will evaluate negotiated rates using rate forms other than the approved recourse rate design, and negotiated rates at less than the maximum recourse rate for the purposes of capacity allocation, scheduling, curtailment and the right of first refusal.⁶⁵ In addition, Appendix D identifies various tariff sheets that contain tariff language appearing to foreclose negotiated rates that are permitted elsewhere in the tariff. We will require Millennium to file revised negotiated rate tariff language when it files its actual tariff sheets in this proceeding.

c. Triennial Rate Review

Consistent with Commission precedent, we will require Millennium to file a cost and revenue study at the end of its first three years of actual operation to justify its existing recourse rates or to propose alternative recourse rates to be effective no later than three years after the in-service date.⁶⁶ In its filing, Millennium's projected units of service must be no lower than those upon which its approved initial rates are based.⁶⁷ The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations, updating cost-of-service data, including the cost of plant-in-service, ITS revenue crediting, PAL service, and throughput.

d. Cost Overruns

Considering the environmental mitigation measures imposed herein and the various delays encountered with this project, there is the potential for cost overruns. To apportion the risk of cost overruns, Millennium and the shippers have agreed to rate caps that are set forth in section 3 in each of the pro forma Firm Transportation Services Agreements. Any cost overruns would initially be borne by the shippers, but only up to the rate caps. After that point, Millennium would bear any cost overruns above the rate

⁶⁴(...continued)
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⁶⁵Tennessee Gas Pipeline Company, 76 FERC ¶ 61,224 (1996); order on reh'g, 77 FERC ¶ 61,215 (1996).

⁶⁶See, e.g., Trunkline LNG Company, 82 FERC ¶ 61,198, at p. 61,780 (1998), aff'd sub nom. Trunkline LNG Co. v. FERC, 194 F.3d 68 (D.C. Cir. 1999); Horizon Pipeline Company, L.L.C., 92 FERC ¶ 61,205, at p. 61,687 (2000); Vector, 85 FERC ¶ 61,083 (1998).

⁶⁷Id.

caps. When Millennium files its statement on construction costs within six months after the facilities are constructed, in compliance with section 157.20(c)(3) of the regulations, it will need to compare the projected construction costs to the actual costs and explain any significant differences.

e. IT Revenue Crediting

Millennium does not propose to allocate any costs to interruptible service. Consistent with Commission precedent, we will require Millennium to allocate an appropriate level of the estimated cost of service to its interruptible service, recalculate its rates, and file documentation demonstrating its recalculation.⁶⁸ In the alternative, Millennium may choose to credit the ITS revenues to its firm shippers. If it does so, Millennium must revise its tariff to provide for a mechanism to credit 100 percent of the ITS revenues, net of variable costs, to its firm recourse rate shippers.⁶⁹

3. Tariff Issues

In general, Millennium's pro forma tariff complies with Part 284 of the regulations. However, since Millennium made its filing in 1997, many changes in the industry and the regulations have taken place, among them the continued evolution of the standards set out by GISB and the implementation of Order No. 637.⁷⁰ Thus, we will require Millennium to revise its tariff in accordance with the discussion below and in accordance with the specific tariff revisions reflected in Appendix D to this order. We

⁶⁸See, e.g., Horizon Pipeline Company, L.L.C., 92 FERC ¶ 61,205 (2000); Independence Pipeline Company, 89 FERC ¶ 61,283 (1999); Maritimes, 80 FERC ¶ 61,136 (1997).

⁶⁹Millennium proposes to credit \$2,000,000 in revenue from interruptible and park and loan service to Rate Schedule FTS. Millennium does not explain what percentage of total ITS revenue the \$2,000,000 represents. In any event, Millennium's pro forma tariff fails to provide any mechanism for the crediting of ITS and PAL revenue.

⁷⁰Regulation of Short-Term Natural Gas Transportation Services, and Regulations of Interstate Natural Gas Transportation Service, Order No. 637, 65 Fed. Reg. 10,156 (Feb. 25, 2000), FERC Statutes & Regulations, Regulation Preambles July 1996 - December 2000 ¶ 31,091, at p. 31,308 (2000), order on reh'g, Order No. 637-A, 65 Fed. Reg. 35,706 (June 5, 2000), FERC Statutes & Regulations, Regulation Preambles July 1996 - December 2000 ¶ 31,099 (2000), order denying reh'g, Order No. 637-B, 92 FERC ¶ 61,062 (2000).

will require Millennium to file its revised pro forma tariff sheets within 60 days of the date of this order.

a. Rate Schedule PAL

Rate Schedule PAL is an interruptible park and loan service that has no assets reserved to provide the service. Rather, Millennium will rely on system flexibility, line pack and other measures to provide the service.

We are concerned that the terms of service make no provision for Millennium to recall its gas if those assets are required to provide unconstrained firm services. We will require Millennium to propose terms of service that reflect the Commission's holding in ANR Pipeline Company.⁷¹

b. Capacity Release

Rate Schedule FTS provides for capacity release for the three tiers of service, with rates dependent upon the terms of the contracts. Shippers with a longer term contract receive a lower rate. Since the Tier II and III shippers have the lowest rates based upon their respective 15 and 20 year contracts (and can release their capacity at lower rates and still achieve full cost recovery), those shippers have an inherent advantage in the capacity release market over service released by Tier I shippers and over Millennium's service. To at least partially level the playing field for the Tier I shippers, we will require, consistent with our order in Algonquin LNG, Inc.,⁷² that Millennium provide the Tier I rate of \$0.5353 per Dth as the maximum capacity release rate for all capacity released for less than a 10-year term. This capacity release rate will at least give Tier I shippers an opportunity to compete successfully in the secondary market. For the same reason, we will require that the maximum rate for capacity released for 10 to 15 years be the Tier II rate of \$0.4989 per Dth, with the maximum rate for capacity released for greater than 15 years being the Tier III rate of \$0.4745 per Dth.

c. GISB Standards and Order No. 637 Compliance

In the regulations, we have adopted various standards, promulgated by GISB, for conducting business practices and electronic communication with interstate gas pipelines. The standards are intended to govern nominations, allocations, balancing, measurement,

⁷¹77 FERC ¶ 61,080 (1996), reh'g denied, 79 FERC ¶ 61,073 (1997).

⁷²79 FERC ¶ 61,139 (1997); order on reh'g, 83 FERC ¶ 61,133 (1998).

invoicing, capacity release, netting and trading, and mechanisms for electronic communications between pipelines and those with whom they do business. While Millennium's pro forma tariff sheets include standards that purport to comply with the GISB requirements, those requirements have changed substantially since the application was filed. In addition, subsequent to the filing of Millennium's application, we issued Order No. 637 and its progeny, which revised the regulations relating to scheduling procedures, capacity segmentation, and penalties in order to improve the competitiveness and efficiency of the interstate pipeline grid.

For these reasons, Millennium must revise its pro forma tariff sheets to comply with the Commission's current regulations. Thus, we will require Millennium to file, within 60 days from the date of this order, pro forma tariff sheets reflecting the current GISB standards. The GISB standards in Millennium's tariff must be incorporated by reference or incorporated verbatim. Further, Millennium must file a chart that identifies the location of the GISB standards in the tariff and those incorporated into the tariff verbatim. In addition, the revised pro forma tariff sheets must also reflect compliance with Order Nos. 637 and its progeny as well as other orders concerning such issues as scheduling equality and discounting.⁷³ Millennium must file a detailed description of how its tariff fully complies with Order No. 637, along with a chart that identifies the location of the tariff changes made to comply with Order No. 637, and any other changes to its revised pro forma tariff. Finally, we will require Millennium to comply with the Part 154.201 filing requirements by submitting a marked version of the tariff pages that were changed from its initial application.

4. Accounting

a. Depreciation

Millennium proposes a straight-line depreciation rate of five percent per annum over a 20-year period for the facilities. A straight-line method to record book depreciation is consistent with the Commission's Uniform System of Accounts.

b. Regulatory Assets

Millennium proposes a levelized rate methodology for its 15 and 20 year agreements that varies depreciation expense for rate purposes. Millennium proposes to

⁷³See, Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at pp. 62,120-21, order on reh'g, 96 FERC ¶ 61,186 (2001); Granite State Gas Transmission, Inc., 95 FERC ¶ 61,450, order on compliance, 96 FERC ¶ 61,273, at pp. 62,036-37 (2001).

record a regulatory asset for the difference between the straight-line depreciation expense for financial accounting purposes and the depreciation expense recovered in its levelized rates. Millennium will record a regulatory asset during years 1 - 6 for the 15 year agreements, and during years 1 - 12 of the 20 year agreements. The regulatory asset will be recovered and amortized over years 7 - 10 and years 13 - 20 for the 15 and 20 year agreements, respectively.

Under the Uniform System of Accounts, it is appropriate to record a regulatory asset for costs that would otherwise be chargeable to expense only when it is probable that the costs will be recovered in future rates.⁷⁴ In recent orders on rate levelization plans, the Commission concluded that the Order No. 552 probability test is met to the extent that a pipeline's capacity is subscribed at certification.⁷⁵ Thus, we allow regulatory assets (or liabilities) to be recorded for the differences between book depreciation expense and the amount of depreciation included in rates to the extent the pipeline's capacity is subscribed.

To the extent Millennium has executed contracts for its usable capacity over the respective terms of the shipper's agreements, we conclude that it would be appropriate for Millennium to record a regulatory asset for the under recovery of its levelized, depreciated cost of service. Millennium should record the applicable regulatory asset in Account 182.3, Other Regulatory Assets, and the offsetting credit in Account 407.4, Regulatory Credits. Millennium should extinguish or amortize the regulatory asset by crediting Account 182.3 and debiting Account 407.3, Regulatory Debits, over the period such amounts are recovered in rates.

c. Income Taxes

Millennium proposes an income tax allowance in its cost of service computed on the basis of full interperiod tax allocation at its currently effective corporate income tax

⁷⁴Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A, Order No. 552, FERC Statutes & Regulations, Regulations Preambles January 1991-June 1996 ¶ 30,967 (March 31, 1993).

⁷⁵See, e.g., TransColorado Gas Transmission Company, 67 FERC ¶ 61,301, at p. 62,064 (1994), order on reh'g, 69 FERC ¶ 61,066 (1994); Mojave Pipeline Company, 69 FERC ¶ 61,244 (1994), order issuing certificate and denying reh'g, 72 FERC ¶ 61,167 (1995), order vacating order, 75 FERC ¶ 61,108 (1996).

rate.⁷⁶ Since all of Millennium's partnership interests are held by corporations, we will treat Millennium as if it were a corporation for accounting and rate purposes, and require Millennium to follow comprehensive interperiod tax allocation procedures.

Comprehensive interperiod tax allocation procedures mean recording a full provision for all income tax effects of temporary differences between recorded amounts on the books of Millennium and amounts reported for income tax purposes on the tax returns of each corporate tax paying member.

d. AFUDC

Millennium proposes to use the project financing approach for determining the cost of funds that should be capitalized as part of the original cost of the project. Under the project financing approach, Millennium may only capitalize the net cost of funds required to finance construction of the project using the project financing procedures as directed by the Commission in similar cases.⁷⁷ Millennium must calculate the AFUDC rate based upon the Commission's revised capital structure and rate allowed for the proposed project: 75 percent debt at an interest rate of 7.5 percent and 25 percent equity based on a 14 percent rate of return. Millennium must recalculate its AFUDC based upon the revised capital structure, using an AFUDC rate that does not exceed the overall project capitalization and cost rates for the entire construction period. If the actual cost of debt financing exceeds 7.5 percent, Millennium may include the actual cost of debt in the final determination of its AFUDC rate.

e. Acquisition of Columbia's Facilities

Millennium proposes to acquire facilities from Columbia at original cost, less the associated accumulated depreciation, in exchange for a partner's equity interest in its project. Millennium will record the \$28 million original cost in Account 101, Gas Plant in Service, and the associated \$7 million accumulated depreciation in Account 108, Accumulated Provision for Depreciation of Gas Utility Plant. Millennium will record Columbia's \$21 million equity interest in Account 211, Miscellaneous Paid-in Capital and record deferred income taxes in the same amount as recorded on Columbia's books

⁷⁶Millennium proposes an effective federal income tax rate of 35 percent. No state income tax is included since New York does not assess such taxes on pipeline companies.

⁷⁷See Mojave Pipeline Co., 69 FERC ¶ 61,244, at p. 61,928 (1994); Alliance, 80 FERC at pp. 61,602-03 (1997).

for the transferred facilities. Millennium's accounting conforms to the Uniform System of Accounts. We will accept Millennium's proposal, except as noted below.

When a gas plant constituting an operating unit or system is conveyed or transferred to another by sale, merger, consolidation, or otherwise, Gas Plant Instruction (GPI) No. 5(F) requires that the transaction be recorded in Account 102, Gas Plant Purchased or Sold. The Uniform System of Accounts requires that a filing be made within six months of the transaction that shows the entries clearing Account 102 when a natural gas company uses Account 102. This requirement gives the Commission the opportunity to review the actual accounting entries related to the transaction to verify that they conform with the requirements of the Uniform System of Accounts. We will require Millennium to comply with the requirements of Account 102 and GPI No. 5(F) and file the appropriate journal entries to clear Account 102 within six months of the date of the transfer.

f. Capacity Lease

Millennium proposes to lease capacity to Columbia in order to enable Columbia to continue serving its A-5 shippers. Millennium proposes to treat the capacity lease as an operating lease for accounting purposes. Millennium will record the monthly receipts in Account 489.2, Revenues from Transportation of Gas of Others Through Transmission Facilities. We have approved similar accounting proposals for transportation capacity lease agreements in other cases.⁷⁸

5. Blanket Certificates

Millennium requests a Part 157, Subpart F, blanket certificate for the construction, maintenance, and operation of its pipeline and a Part 284, Subpart F, blanket certificate to provide open-access transportation service. As an eligible interstate pipeline, it is in the public convenience and necessity to issue Millennium a Part 157 blanket construction certificate to undertake certain activities related to its proposed pipeline facilities, as defined in the applicable regulations of Subpart F of Part 157 of the regulations. We also find that it is in the public convenience and necessity to issue Millennium a Part 284 blanket transportation certificate to provide open-access transportation service, as defined in the applicable regulations of Subpart G of Part 284 of the regulations.

6. Presidential Permit and Section 3 Authorization

⁷⁸See Trunkline Gas Company and Koch Gateway Pipeline Co., 80 FERC 61,356 (1997).

On February 26, 1998, the Commission sent copies of Millennium's application and a draft Presidential Permit to the Secretaries of Defense and State for their recommendations. In letters received at the Commission on March 23, 1998, the Secretaries of Defense and State indicate that they do not object to the issuance of the Presidential Permit. Accordingly, we will issue Millennium a Presidential Permit to own, operate, and maintain the proposed Lake Erie border crossing facilities.

Millennium's operation and maintenance of the Lake Erie border facilities at the international border between the United States and Canada for the purpose of importing natural gas is subject to the Commission's jurisdiction under section 3 of the NGA. An application under section 3 will be approved unless it "will not be consistent with the public interest." We find that Millennium's proposal to own, operate, and maintain the border facilities to import natural gas will facilitate the growing international energy trade between the United States and Canada, as well as further the foreign policy goals of the United States. Accordingly, we will grant section 3 authorization.

7. Initiation of Capacity Lease

Subsequent to Columbia's abandonment of facilities, but prior to the completion of construction of Millennium's entire system, Columbia contends that it will need to make use of capacity on Millennium's system to provide service to its A-5 shippers. Millennium asserts that it requires no authorization from the Commission in order to lease capacity on its incomplete system prior to the project's in-service date. However, Millennium has requested issuance of any necessary Commission authorizations or waivers in the event the Commission determines that such authorization is required.

Service to the A-5 shippers will continue to be provided by Columbia under Columbia's tariff, but Millennium will be the owner and operator of the facilities over which those services will ultimately be performed. Thus, Millennium's operation of the former Columbia facilities after they have been abandoned and replaced will render Millennium subject to the Commission's jurisdiction as a "natural gas company" under section 1(b) of the NGA. Such operation will be pursuant to the certificates which are issued herein. Millennium does not require any additional certificate authority.

B. Columbia

1. Abandonment of Facilities

Columbia's proposal to abandon its Line A-5 facilities will permit Millennium to use a portion of Columbia's existing facilities and rights-of-way for Millennium's project, minimize the need to construct duplicative facilities, and limit the need for a new right-

of-way. At the same time, the capacity lease and exchange arrangement between Columbia and Millennium will ensure that Columbia's existing A-5 shippers continue to receive reliable service at existing levels under Columbia's existing service authorizations. For these reasons, we find that it is in the public convenience and necessity to permit the abandonment of Columbia's Line A-5 facilities.

2. Overpressure Protection Equipment

Columbia states that it intends to install overpressure protection equipment as auxiliary facilities under section 2.55(a) of the regulations. The overpressure protection facilities will be part of the measuring and regulating stations that will be transferred to Millennium. Columbia states that the facilities are necessary because the existing MAOP of its existing stations range from 702 psig to 1,186 psig, while the proposed Millennium pipeline will have a MAOP of 1,440 psig. The overpressure protection equipment will reduce the delivery pressure from Millennium to Columbia's A-5 shippers to levels within the operating parameters of Columbia's existing facilities. In the alternative, if it cannot install the overpressure protection equipment under section 2.55(a), Columbia requests that the Commission grant it certificate authority to install the facilities.

Section 2.55(a) exempts auxiliary installations from the certificate requirements of section 7(c). Section 2.55(a) defines auxiliary installations as "[i]nstallations (excluding gas compressors) which are merely auxiliary or appurtenant to an authorized or proposed transmission pipeline system and which are installations only for the purpose of obtaining more efficient or more economical operation of the authorized or proposed transmission facilities"

We find that the overpressure protection equipment does not qualify as auxiliary facilities under section 2.55(a) of the regulations, because they are necessary to provide continuing service to Columbia's existing A-5 shippers and are not "merely auxiliary or appurtenant" to Millennium's proposed system.⁷⁹ The facilities will be integral components of the measuring and regulating stations that are subject to our section 7(c) jurisdiction. Thus, Columbia cannot install the overpressure protection equipment under section 2.55(a). We will, however, authorize Columbia under section 7(c) to construct and subsequently abandon, by sale, to Millennium these facilities.

⁷⁹E.g., Algonquin Gas Transmission Company, 57 FERC ¶ 61,052 (1991), order on reh'g, 59 FERC ¶ 61,254 (1992) (safety equipment not auxiliary facilities); West Texas Gas, Inc., 62 FERC ¶ 61,039 (1993) (tap and meter station not auxiliary facilities).

3. Lease of Capacity on Millennium

a. Certification

Millennium's proposed lease with Columbia is not like the service provided to any of its other shippers. Over 90 percent of Millennium's throughput is long-haul service, with gas moved almost the entire length of the 424-mile system and with a significant percentage of the deliveries to Mount Vernon. In contrast, service for Columbia is short-haul, with gas delivered from Columbia's storage facilities at Greenwood or Dundee or with gas receipts and deliveries from three other interstate pipelines adjacent to Millennium's system.⁸⁰ Millennium's lease charge to Columbia is based on the 14,000 Dth per day of capacity that will not be available for other Millennium shippers at the 10-year (Tier 1) FTS rate of \$0.5353 per Dth, resulting in an annual charge of \$2,735,383.

The Commission's test for approving lease arrangements is whether the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis.⁸¹ Here, we compared the cost of Columbia's annual lease payments of \$2,735,383 to the cost of service savings of \$6,164,485 realized from the abandonment. This results in a projected net reduction to Columbia's cost of service of \$3,429,102. We find that Columbia and its A-5 customers will realize a net economic benefit from the proposed lease arrangement.⁸² Thus, we find that it is in the public convenience and necessity to authorize the capacity lease and exchange arrangement between Millennium and Columbia.⁸³

The Cities of Charlottesville and Richmond, Virginia (Cities) express concern that the abandonment and capacity lease arrangement may jeopardize Columbia's service to its

⁸⁰Columbia provides service to its A-5 customers using gas exchange or storage arrangements with National Fuel Gas Supply Corporation, Tennessee, and Algonquin.

⁸¹See *Columbia Gas Transmission Corporation*, 79 FERC ¶ 61,160, at pp. 61,755-59 (1997); *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320, at p. 61,888 (1995); and *Mobile Bay Pipeline Projects*, 55 FERC ¶ 61,358, at p. 62,078 (1991).

⁸²Millennium's ratepayers will also benefit from the \$2.7 million revenue generated from the lease.

⁸³Since Columbia will use its existing certificate authority to provide service to its A-5 customers through leased capacity on Millennium's new pipeline, no additional certificate authority is necessary.

existing customers. We find no evidence to support the Cities' contention that Columbia's proposed abandonment of facilities or lease of capacity on Millennium's system will result in the diminution in service to any of Columbia's existing shippers. The proposed lease arrangement benefits Columbia's and Millennium's rate payers and is in the public interest.

b. Lease Rate Related Issues

Colombia proposes to begin recovery of the lease payments recorded in Account 858 through a TCRA filing, effective with Columbia's next rate filing in which the costs of the existing Line A-5 facilities are removed from Columbia's base rates. To avoid the potential double recovery of Columbia's lease payments to Millennium through the TCRA adjustment while it is still charging its A-5 shippers, we will prohibit Columbia from submitting a TCRA filing to recover the Account 858 costs associated with the Millennium lease until Columbia submits a section 4 filing to remove Line A-5 facilities' costs, calculated in the manner shown in Columbia's data response,⁸⁴ from its cost of service and rates.

Several parties filed protests, adverse comments, motions to reject, or in the alternative, requests for discovery and hearing on disputed issues of fact related to the lease payments and other rate issues. Millennium and Columbia filed a joint answer to the protests. We will address below the rate issues raised by the interveners.

i. Valuation of Abandoned Facilities

The Cities question whether Columbia is receiving appropriate value for the abandoned facilities. Mountaineer Gas Company states that it reserves the right to protest any subsequent Columbia rate filing that attempts to recover all or a portion of the lease payments made to Millennium. Mountaineer contends that the value of the A-5 corridor rights exceeds the net book value of those rights and questions whether arm's-length negotiations would have produced a no-fee rate for existing service in exchange for the A-5 rights. Mountaineer also states that it reserves the right to investigate the prudence of the proposed lease payments.

Millennium proposes to purchase Columbia's A-5 facilities at the net book value of the assets, which is the maximum amount that Millennium is allowed by the Commission

⁸⁴See Columbia's October 21, 1998 data response to question number 10.

to include in its rate base.⁸⁵ Columbia proposes to reduce its rate base by the net book value of the abandoned assets, which should be reflected in Columbia's next rate case. Issues related to Columbia's costs can be addressed when Columbia files its next section 4 rate case. However, the parties raising those issues will bear the burden of demonstrating why the costs related to the certificated lease are no longer just and reasonable.

ii. Appropriateness of Lease Payments

Dominion questions whether Columbia is subsidizing the lease arrangement, citing the pro forma lease agreement that provides for leased capacity greatly exceeding the lease payment based on 14,000 Dth per day. The Cities also question whether the amount of the lease payment is appropriate. Assuming some level of lease payments is found appropriate for inclusion in Columbia's cost of service, Mountaineer reserves the right to challenge the method of allocating those costs among Columbia's customers. Cincinnati Gas & Electric Company (Cincinnati Gas) and The Union Light, Heat, and Power Company (Union Light) are concerned that Columbia may cross-subsidize Millennium's construction and operation of the pipeline through the use of Columbia's employees, without proper allocation of any of the related costs to Millennium.

As discussed, Columbia will be able to reflect the lease costs as a cost-of-service item in subsequent section 4 filings, subject to the rate conditions imposed above. Approval of the lease and the lease rate, however, does not go beyond those costs. In any subsequent Columbia general rate proceeding, the parties will be free to review Columbia's costs for any subsidization of Millennium's operating, maintenance, or other expenses.

iii. Cost Basis of Lease Rate

The NYPSC is concerned that the proposed lease rate reflects a departure from cost-based pricing to the extent the rates for short-haul transmission may be less than the lease rate. The NYPSC is also concerned about how the disposition of the line pack for the abandoned pipeline and the lease rate will track changes in Columbia's cost of service.

Contrary to the NYPSC's claims, the proposed lease rate is a cost-based rate. The lease rate is derived from Millennium's cost-of-service rate for 10-year firm service contracts. We have approved similar fixed lease payments in which the monthly lease

⁸⁵See Rio Grande Pipeline Co., 82 FERC ¶ 61,147 (1998).

payments are recorded to Account 858.⁸⁶ The proposed lease rate is based on Millennium's cost of service, not Columbia's.

iv. Necessity of Replacing Line A-5

The Southern Tier Municipal Coalition protested Columbia's application, contending that replacing Line A-5 is not necessary. Southern Tier asserts that Columbia's customers paid for upgrades to Line A-5 from 1993 to 1995 and questions why the A-5 customers now should be subjected to further costs, disruptions, and a potential rate increase. Southern Tier requests that Columbia provide sufficient information to demonstrate that its ratepayers will not be adversely affected by the proposal and conversely how they will benefit from the proposal.

Columbia's A-5 system has been repaired numerous times to fix leaks. From 1993 to 1995, Columbia reconstructed various sections of Line A-5 in Broome County due to a 1993 rupture that caused significant damage to the pipeline and surrounding area.⁸⁷ We believe that Columbia's A-5 shippers will benefit from Millennium's proposals to construct a new pipeline, because the new facilities will enhance the reliability and safety of the service. Although Columbia has not made any guarantees that the proposed lease will not adversely affect its A-5 shippers' rates, evidence in the record indicates that there should be a potential reduction to Columbia's cost of service and an eventual reduction to Columbia's costs.

v. Impact of Abandonment in Columbia's
Next Rate Case

UGI Utilities, Inc., questions the rate impact of the proposal in Columbia's next rate case and requests that Columbia make a filing that demonstrates: (1) the specific accounting treatment for the lease costs and the sold assets; (2) how Columbia will flow through the costs in its TCRA filings; and (3) the net impact of the transaction on Columbia's customers, including base rate and TCRA impact. UGI also requests detailed information regarding the sale of the proposed facilities.

⁸⁶See Midwestern Gas Transmission Corporation, 73 FERC ¶ 61,320 (1995).

⁸⁷The rupture resulted in a fire that destroyed a house and a surrounding field. Also, in its 1998, 1999, 2000 Annual Reports, Columbia indicates that it replaced 12 sections of the A-5 pipeline to insure its safe operation.

UGI's concerns have already been addressed in Columbia's application, its response to UGI's protest, responses to the Commission's data requests, and this order. Columbia has provided specific accounting treatment for the lease costs and the sold assets. Columbia will retire the plant assets, associated depreciation, and taxes. The lease payments to Millennium will be collected in Columbia's TCRA charge and be flowed through its Account 858. Further, Columbia claims its cost of service could be reduced by approximately \$3.4 million as a result of this proposal. As the result of the rate conditions imposed above, Columbia's TCRA will not reflect the costs of the capacity lease before its next filed rate case. At that time, Columbia must file to remove the A-5 facilities from rate base and associated costs from the cost of service.

vi. Miscellaneous Rate Issues

Cincinnati Gas and Union Light express concern over whether upon contract expiration, Columbia's customers in New York will defect to Millennium with corresponding adverse rate impacts on the remaining Columbia shippers.

The A-5 shippers have contracts with Columbia committing them for certain terms. These contracts will not change as a result of our decisions herein. Whether Columbia will be able to retain the A-5 shippers after termination of their respective contracts will depend on the market that exists at the time and on Columbia's responses to those market conditions. We will not shield Columbia from legitimate competition.

4. Accounting

Columbia proposes to abandon in place approximately 130 miles of pipeline and to abandon by removal approximately 92 miles of pipeline. Columbia's proposal to account for these abandonments and the related cost of removal and salvage as normal retirements complies with Gas Plant Instruction No. 10 of the Uniform System of Accounts. In addition, Columbia will abandon by sale to Millennium 26.8 miles of pipeline, as well as the Milford compressor station. With respect to the abandonment by sale, Columbia must comply with the requirements of Account 102 and GPI No. 5 and file the appropriate journal entries to clear Account 102 within six months of the date of the transfer.

In regard to the capacity lease arrangement, Columbia proposes to treat the capacity lease as an operating lease for accounting purposes and to record the lease payments in Account 858, Transmission and Compression of Gas by Others. We find

that Columbia's proposed accounting treatment for capacity lease agreements is appropriate.⁸⁸

VII. Environment

The Commission's staff prepared a final EIS to consider the environmental impacts of the proposed Millennium pipeline. The final EIS addresses the purpose and need for the project; alternatives to the proposed route, including the no-action alternative; soils; geologic resources and hazards; paleontological resources; water resources; impact to Lake Erie and the Hudson River; wetlands; vegetation and wildlife; fisheries; essential fish habitat; endangered and threatened species; land use; recreation and visual resources; cultural resources; socioeconomics; and air quality and noise.

The final EIS was issued on October 4, 2001. On October 12, 2001, the Environmental Protection Agency published in the Federal Register a Notice of Availability of the final EIS. The final EIS addresses the comments received at the public meetings and the comments on the draft EIS (issued April 16, 1999) and the supplemental draft EIS (issued March 12, 2001).

A. Lake Erie

The pipeline would cross approximately 32.9 miles of Lake Erie within U.S. waters and 60.4 miles within Canadian waters. Millennium would use the jet-sled method to construct its pipeline across Lake Erie. This construction method would disturb the lake bottom during excavation of the trench and would result in turbidity and sedimentation within Lake Erie. In response to comments that the pipeline could be damaged from ice scour along the bottom of Lake Erie, the United States Army Engineer Research and Development Center (ERDC) at the Cold Regions Research and Engineering Laboratory reviewed the analyses prepared by Millennium on the proposed trench depth in the lake. As a result of this review, the ERDC recommended that the trench depth be increased from 9.2 feet (Millennium's original proposal) to 11.2 feet in the areas nearest the U.S. shore. The additional trench depth should provide adequate protection for the pipeline in Lake Erie. Thus, we will require Millennium to install its pipeline at the ERDC's recommended depths. No additional sampling or analyses were recommended for contaminated sediments. The details of this analysis are in the final EIS.

⁸⁸See Trunkline Gas Company and Koch Gateway Pipeline Co., 80 FERC ¶ 61,356 (1997).

On March 29, 2000, Millennium received its section 401 Water Quality Certificate from the Pennsylvania Department of Environmental Protection for the Lake Erie crossing.

B. Waterbodies

Millennium would cross 507 waterbodies (including Lake Erie), of which 308 are perennial and 199 are intermittent. Of these, 21 waterbodies would be over 100 feet wide at the crossing. Millennium proposes to cross 493 waterbodies (97 percent of all waterbodies) using dry crossing techniques (e.g., directional drill, horizontal bore, coffer dam, dry ditch, or aerial) unless, at the time of crossing, there is no perceptible water flow.

In addition to the section 401 Water Quality Certification for construction in Lake Erie received from the PADEP, on December 8, 1999, Millennium received its section 401 Water Quality Certificate from the New York State Department of Environmental Conservation (NYDEC) for all waterbodies in New York that would be crossed by the proposed route. This certification included waterbodies that would also be affected by the ConEd Offset/Taconic Parkway Alternative along Consolidated Edison's right-of-way such as Furnace Brook Lake, Teatown Lake, and the Croton River.⁸⁹ Millennium will need to obtain a revision to its section 401 Water Quality Certificate for waterbodies crossed along portions of the route that have changed since December 8, 1999, including any route changes that may be approved by the Commission.

C. Wetlands

According to field delineations conducted by Millennium as well as staff's review of the National Wetlands Inventory maps, the proposed pipeline would cross approximately 673 wetlands for a total crossing length of 41.4 miles, affecting an estimated 414.3 acres during construction. The project would permanently affect about 26.3 acres of forested wetland, which would be converted to non-forested wetland within the permanent right-of-way. No wetlands would be affected by above ground facilities. We will require Millennium to employ one wetland specialist for each construction spread. We find that Millennium's proposed and staff's recommended mitigation would minimize construction impacts on wetlands. In addition, the United States Army Corps of Engineers (COE) intends to include additional wetland mitigation requirements in its section 404 permit to protect wetland resources.

⁸⁹See additional discussion of this alternative below and in the final EIS.

D. Soils

Millennium would cross a portion of the Hudson Hills physiographic region, known as the "black dirt" area, in the Pine Island area in Orange County, New York. This area is comprised of peat deposits. Millennium prepared a site-specific plan for the black dirt area to address concerns identified by landowners and the State of New York Department of Agriculture and Markets (NYSDA&M). The final plan for the black dirt area (December 2000) is the result of numerous meetings and consultations between Millennium, landowners, and NYSDA&M and is recommended by the NYSDA&M. This plan ensures that the deep soil layers will not be mixed and that soil profiles will be reconstructed to protect the integrity of these unique soils.

E. Hudson River

Millennium would cross the Hudson River in Haverstraw Bay, between Bowline Point in Haverstraw and the Franklin Delano Roosevelt Veteran's Administration Hospital in Cortlandt, about 11.3 miles north of Nyack, New York and the Tappan Zee Bridge. The proposed crossing would be 2.1 miles long, making directional drilling infeasible as a construction option. The crossing would be within habitat for the federally endangered shortnose sturgeon, within the designated essential fish habitat (EFH) for seven species of fish, and within the New York coastal zone. In January 2001, we submitted our EFH Assessment to the National Marine Fisheries Service (NMFS).

Currently, Millennium proposes to use an open-water, lay-barge construction method. This would involve installing the pipeline in 1,300-foot long segments, dredging with a closed bucket, storing the dredge spoil in barges, and backfilling the trench using bottom dump barges. After a collaborative process with appropriate Federal and state agencies, Millennium proposes to cross the Hudson River within the agreed upon window between September 1 and November 15. We will require Millennium to use the proposed construction methods and timing window to minimize construction impacts to the habitat in Haverstraw Bay.

On December 11, 2001, the COE sent Millennium a data request concerning Millennium's potential need to blast along the eastern-most 400 feet of the Hudson River crossing.⁹⁰ The environmental conditions in Appendix E anticipate changes to construction. Environmental condition one requires that Millennium follow the construction procedures and mitigation measures described in its application and supplements and as identified in the final EIS, unless modified by this order. If it is

⁹⁰The COE also sent a copy of this letter to the Commission.

necessary for Millennium to modify any of the procedures, measures, or conditions approved herein, Millennium must file a request to do so and must receive written approval from the Director of the Office of Energy Projects (OEP) before using the modification. Section IV.A.6 of Millennium's Environmental Construction Procedures also provides that blasting will not be done in waterbody channels without prior approval from the government authorities having jurisdiction. Thus, Millennium must obtain written approval from the Commission, since blasting in the Hudson River will modify Millennium's filed Hudson River crossing procedures. Consequently, we will modify environmental condition 27 to require that Millennium file the work plan for crossing the Hudson River with the Secretary of the Commission for review and written approval of the Director of OEP.

Since Millennium's notification to the COE that it may have to blast in the Hudson River is new information, Millennium will have to re-enter into consultation with the NYSDEC and the NMFS. As discussed above, the NYSDEC has already issued a section 401 Water Quality Certificate which requires Millennium to construct the crossing as described in Millennium's application and supplements and in more detail in the final EIS. In addition, condition 32 requires Millennium to continue consultation with the United States Fish and Wildlife Service (FWS) and the NMFS in regard to the potential impact of the project on the federally-threatened shortnose sturgeon. Condition 54 also requires that no project facilities be constructed until Millennium files with the Secretary of the Commission a determination of consistency with the New York State coastal zone management plan. The potential blasting will also affect the ongoing permitting process for the COE (section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act) and the New York State Department of State (NYSDOS). Millennium must obtain its section 10 and section 404 permits before project construction can begin. Our staff will use the recommendations and comments from the COE, NYSDEC, NYSDOS, NMFS, and FWS in evaluating any modification that Millennium may file to the Hudson River crossing plan.

F. Endangered and Threatened Species

The final EIS identified seven federally listed endangered or threatened species as possibly occurring in the vicinity of the project area. The endangered species are the shortnose sturgeon, dwarf wedge mussel, clubshell, and Northern riffleshell. The threatened species are the bald eagle, bog turtle, and northern wild monkshood.⁹¹ In

⁹¹The final EIS determined that since northern wild monkshood is not known or likely to occur in the project area, the project would not affect this species or suitable (continued...)

January 2001, we issued our Biological Assessment for the project on the seven federally listed or proposed species. In March and July 2001, the FWS provided its comments and recommendations. With the exception of the shortnose sturgeon, as discussed below and in more detail in the final EIS, by using the recommendations of the FWS, project construction is not expected to impact the identified species.

The shortnose sturgeon occurs in the Hudson River between the George Washington Bridge in Manhattan and the Federal Lock and Dam in Troy, New York and, in particular, in the Haverstraw Bay area. On September 14, 2001, the NMFS submitted its biological opinion and an incidental take statement to the Commission, concluding that the proposed action may adversely affect, but is not likely to jeopardize, the continued existence of the federally endangered shortnose sturgeon. The incidental take statement authorizes the take of one shortnose sturgeon from either injury or mortality, and includes three non-discretionary terms and conditions that must be complied with, as well as four discretionary conservation recommendations. We conclude that Millennium should comply with the recommendations of the FWS and the NMFS because the recommendations should help protect the federally listed threatened or endangered species in the project area.

G. New Croton Reservoir Watershed

The Town of Cortlandt and the New York City Department of Environmental Protection (NYCDEP) filed comments concerning the impact of the project on the New Croton Reservoir watershed. The pipeline will cross about 2.5 miles of the watershed near its western edge, approximately 0.6 mile downstream from the New Croton Dam, affecting about 20 to 25 acres of the watershed. The NYCDEP asserts that there were some inaccuracies in the final EIS regarding the size of the watershed. The final EIS states that the entire New Croton Reservoir Basin is about 241,920 acres in size (based on the reported drainage area for the United States Geological Survey station on the Croton River at the New Croton Dam). The staff estimates that the project will affect less than two hundredths of one percent (0.02%) of the New Croton Reservoir Basin in Westchester County. However, the NYCDEP states that the New Croton Reservoir watershed is about 37,700 acres in size. Based on the area of the New Croton Reservoir watershed provided by the NYCDEP, the project will affect less than seven one hundredths of one percent (0.07%) of the watershed. Regardless of which number is used, we find that the conclusion that the construction impact area is small relative to the watershed area is still valid.

⁹¹(...continued)
habitat for this species.

The NYCDEP contends that construction impact on the New Croton Reservoir is not related to the size of the basin, as suggested in the final EIS, but that the impact is determined by the magnitude of the disturbance. Obviously, the magnitude of the disturbance determines the potential pollutant loading to a waterbody. Further, the distance of the disturbed area from the waterbody is important. However, the capacity of a waterbody to assimilate and dilute pollutant loadings is a function of the volume of water. The volume of water in the New Croton Reservoir and the flow in the Croton River are direct functions of the size of the basin. Thus, we believe that the basin size relative to the disturbance area provides a reasonable measure of the potential impact to water quality.

The NYCDEP contends that the pipeline would cross pristine water supply lands within the watershed. Since the water taken from the New Croton Reservoir is unfiltered, watershed protection efforts are the sole practice used to ensure that water quality is maintained at the highest level. For this reason, the NYCDEP is concerned about construction activity within the watershed. The NYCDEP states that failure to complete the pipeline construction according to strict construction practices would result in significant water quality impairment and undermine the unprecedented protection efforts undertaken by New York City and Federal, state, and local governments.

This order requires Millennium to hire and fund a third-party contractor, working under the direction of our staff, for the sole purpose of monitoring Millennium's compliance with the environmental conditions attached to the order, including all measures proposed by Millennium. Further, Millennium is required to have environmental inspectors on its staff that are directly responsible for implementing the environmental conditions of this order. Millennium is also required to identify aquifer protection districts and watersheds on its construction alignment sheets and to expand its Spill Prevention, Containment, and Control Plan to specifically include the reasonable requirements of local or state officials concerning construction in aquifer protection areas and public water supply watersheds. We believe that these conditions should address the NYCDEP's concerns.

If the pipeline cannot be moved outside the watershed area, the NYCDEP recommends that Millennium comply with the New York City Watershed Rules and Regulations. The NYCDEP states that these requirements include a Revocable Permit for access to New York City property and a Stormwater Pollution Prevention Plan for construction in the New York City watershed. Since this order requires Millennium to apply for local and state permits for crossing public water supply watersheds, Millennium would need to comply with the established construction practices and enhanced protection measures in the Watershed Rules and Regulations and Stormwater Pollution Prevention Plan to minimize impacts within the New York City watershed.

The NYCDEP is concerned about erosion resulting from the 20 to 25 acres of construction disturbance within the watershed, suggesting that trees be retained on the construction site to the greatest extent possible to prevent erosion, and that restoration plans include planting of trees and shrubs rather than only herbaceous vegetation. The NYCDEP is also concerned about burning brush and stumps (slash) near waterbodies, the possibility of spreading noxious plants within the watershed, minimizing in-stream construction time, and mitigating the impact of any wetland filling.

While we agree that tree removal should be minimized, it is not practical to retain trees within the construction right-of-way because of the size of construction equipment and worker safety. Further, replanting deep-rooted trees within the permanent right-of-way would affect pipeline maintenance and safety practices. Millennium's Environmental Construction Standards minimize construction impact on waterbodies by limiting the time to complete crossings and requiring restoration of the waterbody, its banks, and 50 foot buffers within 24 hours of backfilling. No wetlands will be filled. Millennium shall obtain a permit, with appropriate wetland mitigation, from the COE. The COE may include planting requirements for wetland restoration in its permit for the project.

We believe that Millennium should work with the NYCDEP to develop a construction and restoration plan for construction activities within the New Croton Reservoir watershed. The plan may include tree and shrub planting in temporary upland work space areas, plantings along stream banks, and the prohibition of burning slash near waterbodies. Although Millennium has stated that it would develop plans to control noxious weeds as needed, the plan could also include specific requirements to control the spread of noxious weeds within the watershed. Thus, in condition 65, we will require Millennium to develop, in consultation with the NYCDEP, a construction and restoration plan consistent with the plan required for construction in the Teatown Lake Reservation area.

The Town of Cortlandt contends that soil disturbance during construction of the pipeline will result in significant storm water discharges of phosphorus that is currently bound in the soil. The disturbed soils within the watershed are thin and are not being used for agriculture, so there will be minimal additions to the potential phosphate load from fertilizers. Millennium's Environmental Construction Standards, which are based on the staff's Upland and Erosion Control, Revegetation, and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures), as well as the proper maintenance of erosion controls should minimize surface runoff during storms. Further, Millennium agreed to construct the project in a manner consistent with any local requirements for construction within this and any other crossed watershed. We find that the requirements for construction projects within the watershed, augmented by Millennium's Environmental Construction Standards and staff's Plan and Procedures, and

the small area within the watershed affected by the project should minimize phosphate load additions to the New Croton Reservoir.

H. Catskill Aqueduct

The NYCDEP expressed concern about the location of the proposed pipeline crossing of the Catskill Aqueduct in Yonkers, New York (at a location known as the Bryn Mawr Siphon). In a December 3, 2001 filing, the NYCDEP states that the depth of the Catskill Aqueduct was incorrectly described as eight feet below the ground surface in the draft, supplemental, and final EISs, but that the correct depth of the aqueduct is three feet below the ground surface. If correct, this is new information not previously reported to the Commission in the numerous comment letters filed by the NYCDEP or in data responses filed by Millennium.

The NYCDEP believes that a failure of the pipeline could result in an interruption of water supplied to New York City via the aqueduct. The NYCDEP states that the aqueduct was built nearly 90 years ago and, due to its age, the present structural integrity is unknown.

If the aqueduct pipes rupture at the Bryn Mawr Siphon, the NYCDEP contends that there would be a catastrophic release of about one million gallons of water that is in the 14 miles of pipe between the Kensico Reservoir and the Hillview Reservoir, plus the additional volumes of water that would continue to flow into the system until valves were closed. The NYCDEP estimates that this volume may be up to 20 million gallons. The NYCDEP contends that repair to this system would take months and would affect about 40 percent of New York City's water supply, as well as the water supply of other communities in Westchester County.

The final EIS addresses the NYCDEP's concern about a gas pipeline explosion at the aqueduct crossing. The final EIS acknowledges that a rupture of the aqueduct would result in a loss of water and water pressure, posing an immediate threat to human health, creating severe problems in sanitation, inhibiting the ability to adequately fight fires, and causing localized flooding. While recognizing the magnitude of these problems, the final EIS determines that it would be speculative to attempt to quantify these impacts.

The NYCDEP contends that the final EIS fails to acknowledge the critical nature of the water supply infrastructure for New York City and the potential for disruption and that the final EIS mistakenly concludes that the crossing of the aqueduct is a design issue. We disagree. The final EIS recognizes the potential for damaging the Catskill Aqueduct at the proposed crossing by requiring that Millennium develop a site-specific plan for the crossing that would be reviewed by an independent third-party engineering contractor

who would be directed by the NYCDEP. The independent assessment would be based on the NYCDEP's agreement with Millennium for this analysis, as stated in NYCDEP's December 3, 2001 filing. Specifically, the final EIS and this order recommend that:

Millennium shall file with the Secretary the results of any alternative crossing locations developed in consultation with the [NYCDEP], the site-specific crossing plan and design for the Catskill Aqueduct (approximate milepost 418.2), the independent engineering assessment of the proposed site-specific crossing plan, and any comments from the NYCDEP on the alternative crossing locations and the site-specific crossing plan. The final Catskill Aqueduct crossing plan shall be filed with the Secretary for review and written approval of the Director of OEP.⁹²

Until the site-specific Catskill Aqueduct crossing plan is adequate, Millennium will not be able to construct its pipeline at this site.

The NYCDEP objects to the portion of this condition that states that "the independent engineering assessment of the proposed site-specific crossing plan, and any comments from the NYCDEP." The NYCDEP believes that this language reflects an attitude that comments of note are not expected from the NYCDEP. To the contrary, we want to be sure that comments on the plan from the appropriate agency that are made to Millennium are filed with the Commission. For this reason, the final EIS requires Millennium to file all comments.

The NYCDEP contends that there has been ample time for Millennium to complete the site-specific plan and the required independent analysis prior to the issuance of the final EIS. The NYCDEP states that it notified Millennium in November 2000 about its willingness to review a crossing design and outlined steps needed to coordinate data transfers and site access, but that Millennium did not file a request for site access until about six months after the notification. The NYCDEP states that Millennium received the "offer letter" in August 2001 and the access permit on September 13, 2001, but that Millennium has taken no steps to initiate the survey required to do the design and analysis.

Until it obtained access to the site, Millennium was unable to complete the required site-specific plan for the aqueduct crossing. Since it has now obtained this permission, Millennium could begin the surveying and other data collection needed for completion and analysis of its crossing plan. We agree with the NYCDEP that it would

⁹²Appendix E, condition 28.

have been preferable if this analysis had been completed in a more timely manner. However, as previously stated, we will require the site-specific crossing plan, and all studies necessary to support its findings, be finalized prior to construction at the Catskill Aqueduct crossing.

The NYCDEP states that the final EIS prematurely dismisses alternate routes near the Bryn Mawr Siphon because the pipeline would cross residential areas, yet the pipeline terminates in Mount Vernon, a densely populated city. While it is true that segments of the pipeline route will affect densely populated areas, we made every effort to minimize the number of such segments. Usually, we do not recommend moving proposed pipeline routes from a less populated area to an alternative route in a more populated area.

The NYCDEP contends that a zero-risk engineering design for the Catskill Aqueduct crossing may not be technically feasible and that a route change may have to be developed to avoid the crossing. If it is unable to design its project in compliance with the certificate conditions, Millennium would need to file an amendment to its certificate.

I. Coastal Zone Management Consistency

The Millennium pipeline would affect the New York and Pennsylvania coastal zones. The only affected area within the Pennsylvania coastal zone would be in Lake Erie. No impacts are anticipated on cultural resources or endangered and threatened species within the designated Pennsylvania coastal zone. In April 2000, Millennium received a coastal zone consistency determination from Pennsylvania.

Millennium initiated consultation with the NYSDOS in November 1998 for the segments of pipeline within the coastal zone of New York (the Lake Erie and Hudson River areas). In March 2001, Millennium provided an updated Coastal Zone Management consistency application to the NYSDOS. The NYSDOS indicated that it will complete its review of the project in the fall 2001. To date, this review has not been completed. Millennium can not be constructed until it receives a coastal zone consistency determination from the NYSDOS.

J. Land Use – Effect on Landowners and Communities

Landowners and local governments oppose the proposed and alternative routes in Westchester County. They raise concerns about safety when the project is near residences, schools, hospitals, and community services. Also, some parts of the proposed and alternative routes for the project would require construction in or along streets.

The United States Department of Transportation (DOT) is mandated to provide pipeline safety under 49 U.S.C. Chapter 601. The Research and Special Programs Administration's (RSPA), Office of Pipeline Safety in DOT, administers the national regulatory program to ensure the safe transportation of natural gas and other hazardous materials by pipeline. The RSPA develops safety regulations and other approaches to risk management that ensure safety in the design, construction, testing, operation, maintenance, and emergency response of pipeline facilities. Many of the regulations are written as performance standards that set the level of safety to be attained and allow the pipeline operator to use various technologies to achieve safety. The RSPA's work is shared with state agency partners and others at the Federal, state, and local level. Section 5(a) of the Natural Gas Pipeline Safety Act provides for a state agency to assume all aspects of the safety program for intrastate facilities by adopting and enforcing the Federal standards, while section 5(b) permits a state agency that does not qualify under section 5(a) to perform certain inspection and monitoring functions. A state may also act as DOT's agent to inspect interstate facilities within its boundaries. The DOT, however, is responsible for enforcement action. The majority of the states have either 5(a) certifications or 5(b) agreements, while nine states act as interstate agents.

The NYPSC has an agency agreement with DOT, whereby NYPSC inspects the operations of natural gas pipeline facilities in New York. The NYPSC is responsible for ensuring that utilities provide safe and reliable service in New York. The NYPSC asserts that its staff is larger than the staff of the DOT's Northeast Region and that the actual monitoring of gas safety measures in New York would be done by NYPSC staff. The NYPSC contends that its staff would monitor Millennium's construction activity from the Canadian boarder in Lake Erie to its termination point in Mount Vernon for compliance with DOT's regulations. The NYPSC would also monitor operation of the pipeline once it is constructed. We believe that these actions will help ensure that the pipeline will be constructed and operated safely.

The DOT's pipeline standards are published in 49 C.F.R. Parts 190 - 199. Part 192 addresses natural gas pipeline safety issues. Under Part 192, the pipeline and above ground facilities associated with the Millennium project must be designed, constructed, operated, and maintained in accordance with the DOT's Minimum Federal Safety Standards. These regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures. Part 192 specifies material selection and qualification, design requirements, and protection from internal, external, and atmospheric corrosion.

Under a Memorandum of Understanding between the Commission and DOT on Natural Gas Transportation Facilities,⁹³ DOT has the exclusive authority to promulgate Federal safety standards used in the transportation of natural gas. Section 157.14(a)(9)(vi) of the regulations requires that an applicant certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facility for which a certificate is requested in accordance with Federal safety standards and plans for maintenance and inspection, or shall certify that it has been granted a waiver of the requirements of the safety standards by the DOT in accordance with section 3(e) of the Natural Gas Pipeline Safety Act. We accept this certification and do not impose additional safety standards other than DOT's standards. If we become aware of an existing or potential safety problem, there is a provision in the Memorandum of Understanding to promptly alert DOT. The Memorandum of Understanding also provides for referring to DOT complaints and inquiries made by state and local governments and the general public involving safety matters related to pipelines under the Commission's jurisdiction. Our staff has consulted with the DOT and the NYPSC about safety issues related to Millennium.

Part 192 also defines area classifications (classes 1 through 4) based on population density in the vicinity of the pipeline, and specifies more rigorous safety requirements for populated areas. A class 4 location has the highest population density of the class areas. Because avoidance of populated areas is not always possible, the standards in the Federal regulations become more stringent as the human population density increases.

The NYPSC and Millennium developed a Memorandum of Understanding (Memorandum) and a supplemental Memorandum of Understanding (supplemental Memorandum) to address pipeline construction within 1,500 of Consolidated Edison's powerline corridor in Westchester County. The additional design, construction, operation, and maintenance recommendations are more rigorous than the requirements for pipeline construction in a class 4 location. We will require Millennium to use these recommendations to construct its facility.

Part 192 requires that each pipeline operator must establish and maintain liaison with appropriate fire, police, and public officials to learn the resources and responsibilities of each organization that may respond to a natural gas pipeline emergency, and to coordinate mutual assistance. The pipeline operator must also establish a continuing education program to enable customers, the public, government officials, and those engaged in excavation activities to recognize a gas pipeline emergency and to report it to appropriate public officials. Millennium will provide the

⁹³The Memorandum of Understanding was issued January 15, 1993.

appropriate training to local emergency service personnel before the pipeline is placed in service.

The final EIS addresses pipeline accident data supplied by the DOT. The analysis of this data concludes that the frequency of service incidents is strongly dependent on pipeline age. While pipelines installed since 1950 exhibit a fairly constant level of service incident frequency, pipelines installed before 1950 have a significantly higher rate, partially due to corrosion which is a time-dependent process. Further, new pipe generally uses more advanced coatings and cathodic protection to reduce the potential for corrosion. The available data show that natural gas pipelines continue to be a safe and reliable means of energy transportation.

Interveners and commenters also raise concerns about community disruption, access to homes and businesses, possible damage to utility infrastructure and loss of service (sewers, storm drains, water lines, and other buried utilities), access to emergency services, and traffic disruption. We recognize that pipeline construction will temporarily impact the communities in which it is occurring. For this reason, we will require Millennium to ensure that people have access to their homes and businesses during construction⁹⁴ and require Millennium to begin restoration of residential properties, trails, and roads immediately after backfilling the trench.

Further, we will require Millennium to develop an environmental mitigation complaint resolution procedure to ensure that all affected landowners will know who to contact when they have questions or problems with project construction or restoration.

K. Construction of the Pipeline within Consolidated Edison's Right-of-Way

Originally, Millennium proposed to construct its pipeline within an existing Consolidated Edison electric powerline right-of-way in Westchester County. The pipeline location within this corridor was approximately between mileposts 391.6A⁹⁵ and 399.1A, mileposts 399.4A and 405.1A, and mileposts 408.7A and 417.7A. The pipeline would have been placed approximately 50 feet from the powerline tower structure

⁹⁴See also the discussion related to the City of Mount Vernon below.

⁹⁵The "A" designation indicates the milepost is on the original proposed route and not on the amended route proposed in Docket No. CP98-150-002.

centerline between mileposts 391.6A and 399.1A and between the powerline tower structures from mileposts 399.4A to 417.7A. The separation between the centerlines of the two powerline structures on the existing right-of-way ranges between 80 and 175 feet. The segment between mileposts 391.6A and 408.7A is within a relatively undeveloped area; the segments between mileposts 408.7A and 417.7A are in more developed commercial and residential areas where deviations off the powerline right-of-way would impact adjacent development.

Because of reliability concerns over this routing raised by the NYPSC, Consolidated Edison, and the New York State Reliability Council (NYSRC), our staff asked Millennium how it would resolve the issue of construction and operation of the pipeline along this corridor. In response, Millennium filed an amendment to its application, rerouting about 22.7 miles of the pipeline in Westchester County away from Consolidated Edison's corridor. Millennium moved the pipeline in order to follow road rights-of-way, bicycle paths, and park roads along a new proposed route that the staff designated the "9/9A Proposal." This new route raised other concerns from affected landowners and communities. As a result, the final EIS develops and evaluates two alternatives that were compromises between the original proposed route and the 9/9A Proposal (the ConEd Offset/State Route 100 and the ConEd Offset/Taconic Parkway Alternatives). The issues raised by the proposed and alternative pipeline routing are discussed below.

Consolidated Edison contends that its powerline constitutes the primary transmission facility that supplies about 40 percent of the electricity to Westchester County and New York City and that any service interruption to this portion of its electric transmission system would have catastrophic effects. Consolidated Edison requests that the Commission consider alternatives that would generally move the pipeline away from the powerline right-of-way or away from the most sensitive areas of its system.

Millennium's route in Westchester County would cross rocky terrain with thin soils. The need for blasting would be high. The NYPSC points out that blasting is a concern during construction since it might damage the existing powerlines or the towers. The thin soils would make the design of the facilities for grounding the two utilities more difficult because the soil's natural resistivity would have a minimal contribution to the design.

Millennium asserts that procedures could be developed for the safe construction and operation of the pipeline within the powerline rights-of-way in accordance with the DOT's safety and corrosion protection requirements.

In their comments on the draft EIS, the NYPSC and Consolidated Edison express concerns about construction and operation of the pipeline within the powerline right-of-way. Again, in early 2000, they filed extensive comments opposing installation of the pipeline adjacent to or within the Consolidated Edison's right-of-way in Westchester County. On March 6, 2000, the NYSRC filed comments contending that there is a very low probability of a gas explosion but that, if it occurred along Consolidated Edison's right-of-way, the potential consequences could be catastrophic to the electric supply for New York City.

Our staff recognizes that the concern about powerline damage during construction, particularly due to blasting, is understandable. However, our staff believes that the concerns about operation of the pipeline within the powerline corridor are overstated. The staff evaluation of this issue is presented in sections 6.2.1 and 6.2.2 of the final EIS.

It should be pointed out that Consolidated Edison is presently constructing a replacement pipeline at the base of its electric towers along a portion of its powerline right-of-way in Westchester County. Consolidated Edison used its own safety procedures to protect the electric lines from damage due to blasting or other construction activities. In addition, for such construction activities, there are also federal regulations that require minimum clearances between 345 kV electric lines and any part of a crane or other construction equipment.⁹⁶ Further, these regulations require that a person be designated to observe the clearance of equipment for all operations where it is difficult for the operator of the equipment to maintain the desired clearances. We believe that Millennium can safely conduct construction activities near all powerlines along the project if it complies with these requirements. Further, we believe that the use of Consolidated Edison's own blasting requirements would minimize the risk of damage due to blasting near the powerlines.

The Memorandum between the NYPSC and Millennium has more stringent pipeline design, construction, operation, and maintenance requirements than required by the DOT's pipeline standards. The NYPSC equates these negotiated requirements to those required by the State of New York for intrastate natural gas pipeline construction in densely populated urban areas.

The NYPSC states that it has no objection to Millennium's 9/9A Proposal, although it recognizes that this route ameliorates, but does not eliminate, Consolidated Edison's concerns. The 9/9A Proposal eliminates about 20 miles of construction within Consolidated Edison's powerline corridor, but it would still cross Consolidated Edison's

⁹⁶See 29 C.F.R. § 1926.550 (2001).

right-of-way at five locations (mileposts 402.7, 405.5, 406.9, 409.7, and 416.6) and would be parallel to, and in some places less than 100 feet from, its right-of-way for about 2.7 miles between mileposts 402.7 and 405.4.

The supplemental Memorandum between NYPSC and Millennium addresses a modification to the ConEd Offset/State Route 100 Alternative presented in the supplemental draft EIS (see additional discussion below under Alternatives). This modification, known as the ConEd Offset/Taconic Parkway Alternative, incorporates suggestions from the municipalities of Briarcliff Manor, Croton-on-Hudson, and Ossining to follow the Taconic State Parkway, rather than State Route 100. It also increases the pipeline offset distance from the electric lines by about 35 feet, since the NYPSC recommended a distance of 100 feet measured from the conductors rather than the towers. The NYPSC believes that use of the supplemental Memorandum for the ConEd Offset/Taconic Parkway Alternative would allow for safe construction and operation near Consolidated Edison's right-of-way. In response to the ConEd Offset/Taconic Parkway Alternative, Consolidated Edison suggests that the pipeline route along its corridor be moved from the south to the north side of the right-of-way. In response, the NYPSC states that it prefers to minimize the number of crossings of Consolidated Edison's powerline right-of-way by the pipeline project. If the pipeline were moved to the north side of the right-of-way, two additional crossings of the powerline would be needed. The final EIS evaluates the placement of the pipeline along the north side of Consolidated Edison's corridor and rejects that option. We concur with the final EIS.

Consolidated Edison believes that the pipeline design recommendations in the Memorandum and supplemental Memorandum should be adopted. Millennium states that it will construct its pipeline in accordance with the Memorandum and supplemental Memorandum. We will require Millennium to adopt the memoranda.

L. Town of Cortlandt, New York

On November 13, 2001, the Town of Cortlandt filed comments to the final EIS, raising concerns about the impact of the pipeline on the Jane E. Lytle Memorial Arboretum and blasting along Consolidated Edison's powerline right-of-way. Cortlandt also suggests the use of the proposed Eastchester Expansion Project as an alternative route for construction in Westchester County.

Blasting will be required along most of the construction right-of-way along the ConEd Offset/Taconic Parkway Alternative. To minimize impacts, we will require Millennium to conduct geotechnical studies to develop site-specific blasting plans along this alternative. Blasting would be performed by a licenced blasting contractor in accordance with all Federal, state, and applicable valid county and municipal construction

requirements. Any blasting would be conducted only during daylight hours and in accordance with Consolidated Edison's requirements filed with the Commission on October 23 and November 7, 2000. Blasting would be conducted with minimal charges that are sized and located to merely fracture the rock, not remove it. All blasts would be covered with mats to minimize airborne material. Rock removal would be accomplished with a backhoe or other means. Further, to identify structures that may be damaged by blasting activities, Millennium will, with the landowner's approval, conduct pre- and post-blasting inspections at all residential or commercial structures or utilities within 150 feet of blasting.

Cortlandt suggests the Iroquois Gas Transmission System's (Iroquois) Eastchester Expansion Project as an alternative to Millennium.⁹⁷ Cortlandt states that the Eastchester project requires only 32.8 miles of pipeline construction compared with more than 400 miles for Millennium. Cortlandt also states that the Eastchester project would not be constructed in Westchester County, eliminating all of the Westchester County impacts identified in the final EIS.

The final EIS combines Iroquois' proposed Eastchester project and Algonquin's existing facilities in an attempt to create an alternative to Millennium. In this way, the Iroquois and Algonquin facilities could transport 350,000 Dth of gas per day, *i.e.*, the transportation volume that would be shipped from Ramapo to Mount Vernon under Millennium's proposal.⁹⁸ The Iroquois and Algonquin alternative would require the construction of approximately 36 miles of 42-inch diameter pipeline and 40,934 horsepower of new compression on Algonquin's system (the addition of compression at three existing compressor stations and the construction of two compressor stations), the construction of Iroquois' pending Eastchester project (32.8 miles of 24-inch diameter pipeline, the addition of compression at four compressor stations, and the construction of two stations), a 4.2-mile-long lateral to the Bowline Power Plant, and a lateral to the IBM plant. The final EIS concludes that this alternative would have greater environmental impact, because it would require at least 72.9 miles of pipeline compared to Millennium's proposed 45.4 miles of pipeline between Ramapo and Mount Vernon. Our staff estimates that the total cost for the alternative facilities would be about \$199,000,000, plus the cost

⁹⁷In Docket No. CP00-232-000, et al., Iroquois proposes to construct and operate a line to extend its system from Northport, New York on Long Island, eastward to a new termination point in the Bronx (the Eastchester project).

⁹⁸The western portion of the Millennium Pipeline Project would still need to be constructed from the Canadian interconnection in Lake Erie to Ramapo in order to make deliveries at Ramapo.

of the proposed Eastchester Expansion Project (\$173,900,000), compared to the estimated \$76,150,000 for construction of the proposed Millennium facilities between Ramapo and Mount Vernon. This cost does not include the cost to construct laterals to provide service to IBM, a Millennium shipper, or to the Bowline Power Plant. Other than the proposed Eastchester portion of the alternative, there is no proposal before the Commission to construct these facilities. Thus, the final EIS concludes that Millennium's proposal is superior to the Eastchester alternative. We concur in that conclusion.

M. City of Mount Vernon

Millennium proposes to construct approximately 1.9 miles of pipeline in the City of Mount Vernon. About one mile of Millennium's line would run along the Bronx River Parkway. The rest of the proposed line would run along residential and commercial streets before terminating at an interconnect with an existing Consolidated Edison pipeline.

1. Construction Impacts

The citizens of Mount Vernon raised concerns about pipeline construction and operation near residential neighborhoods, high rise apartments, the Hamilton Elementary School, two fire stations, the Mount Vernon Hospital, the Greater Centennial African Methodist Episcopal Zion Church, a neighborhood health center, and the City's underground utilities. The citizens of Mount Vernon also object to the location of the Mount Vernon metering and regulating station in the parking area near the neighborhood clinic at South 8th Avenue and West 4th Street.

We recognize that in-street construction is disruptive. Thus, the final EIS recommends additional construction mitigation measures for construction in Mount Vernon, including having underground utility repair crews and equipment on-site during in-street construction; preparing site specific plans for construction near the elementary school and fire stations; and preparing site specific plans for all construction in Mount Vernon, that includes traffic detours, construction timing, alternate parking locations, resident notification, maintenance of access to buildings and residences, and construction vehicle maintenance.

On November 15, 2001, Mount Vernon filed comments to the final EIS, raising concerns about public health and safety and the potential impacts pipeline construction might have on the City's existing infrastructure such as sewers, storm drains, and water lines. Mount Vernon's concerns about pipeline safety are discussed extensively in the final EIS, which incorporates data from the DOT. As discussed above, Millennium would be designed, constructed, operated, and maintained in accordance with the pipeline

standards in 49 C.F.R. Parts 190 - 199. Specifically, 49 C.F.R. Part 192 addresses natural gas pipeline safety issues. Mount Vernon's concerns about damage to its infrastructure were also discussed in the final EIS. The final EIS and this order make recommendations designed to mitigate potential damage to Mount Vernon's infrastructure.⁹⁹ Specifically, we will require Millennium to be responsible for the repair of damaged city utilities and for relocating citizens and businesses, or providing other appropriate compensation, that may be needed as a result of utility disruption caused by pipeline construction in Mount Vernon.¹⁰⁰

2. Millennium's Termination Point

In its November 15 comments to the final EIS, Mount Vernon contends that "there are multiple alternative termination points" for the proposed Millennium pipeline.¹⁰¹ Moving the termination point of Millennium's pipeline, however, does not eliminate the fact that added infrastructure will be necessary in order to deliver the gas to Millennium's New York City markets. Millennium needs to tie-in with Consolidated Edison's high pressure facilities. Consolidated Edison's high pressure (250 psig) backbone pipeline runs from its Hunt Point compressor station in the South Bronx north into central Westchester County. Moving the Millennium termination point to another location on Consolidated Edison's high pressure system, particularly to the north, would only serve to compel Consolidate Edison to construct more facilities north to Millennium's termination point. Thus, instead of having Millennium's facilities built in the city, Consolidated Edison's facilities would have to be built in their place. Since additional facilities would need to be constructed in any event, moving the termination point would simply serve to create similar disturbances to other locations, other landowners, and other environmentally sensitive areas.

⁹⁹Appendix E shows the proposed and alternative pipeline routes through Mount Vernon. Appendix F compares resources along the proposed and alternative routes and the lengths of the proposed and alternative routes.

¹⁰⁰See Appendix E, condition 48.

¹⁰¹Mt. Vernon's comments at 17.

3. Environmental Justice

Mount Vernon and others claim that the Commission has failed to apply the principles of environmental justice to its consideration of the proposed Millennium pipeline in accordance with Executive Order 12898¹⁰² and NEPA.

Executive Order 12898 states that specified Federal agencies shall make achieving environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minorities and low-income populations. Executive Order 12898 applies to the agencies specified in section 1-102 of the order. This list includes Executive Branch agencies, but not the Federal Energy Regulatory Commission, which is an independent regulatory agency. Section 6-604 requests that "[i]ndependent agencies . . . comply with the provisions of this order."

Although Executive Order 12898 is not binding upon the Commission, we have nonetheless examined the Millennium pipeline to ensure that it does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. As part of our consideration of this issue, the public, regardless of economic status and ethnicity, was given the opportunity to comment on the project, both in comments filed with the Commission and in public meetings held in affected locations.

Our examination led us to conclude that Millennium's pipeline will not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations. As noted in the final EIS, the Millennium pipeline is a linear project that will affect populations from a variety of ethnic and economic backgrounds. About 0.36 percent of the project (approximately 1.9 miles) will be constructed in Mount Vernon, which is about 72.4 percent minority and is the only minority community along the 424-mile long project. Obviously, the impacts of in-street construction in developed areas, such as Mount Vernon, are typically more significant than in less developed areas, but the impacts of construction and operation will be temporary, regardless of location.¹⁰³ To reduce the impacts of construction in Mount Vernon, we are requiring measures to mitigate those impacts, as set forth in the conditions attached to this order. We also note, as discussed below, that construction in this location is necessary to enable Millennium's

¹⁰²3 C.F.R. 859, 59 Fed. Reg. 7629 (1994).

¹⁰³See the final EIS at 7-16 and 7-17.

facilities to connect with Consolidated Edison's existing 20-inch diameter pipeline in Mount Vernon.

4. Constitutional Arguments

In its November 15 comments, Mount Vernon claims that the Commission "is in the process of violating" the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act of 1964, and Title VIII (the Fair Housing Act) of the Civil Rights Act of 1968. Specifically, Mount Vernon contends that, in a pending Iroquois case,¹⁰⁴ the Commission "expressly urged" that an alternative pipeline route be selected away from the white, middle-class community of Throgs Neck, while here the Commission appears content to route a pipeline through the most densely populated and sensitive residential and business areas of the mostly minority, low-income community of Mount Vernon.¹⁰⁵

Iroquois involves the proposed construction and operation of 32.8 miles of 24-inch diameter pipeline from the termination point of Iroquois' system near Northport, New York on Long Island, eastward to a new termination point in the Bronx (the Eastchester project). Iroquois' proposals contemplate the construction of 29.9 miles of pipeline in New York State waters and 2.9 miles of pipeline on land. Under the proposals, approximately 10,000 feet of line and an interconnection facility would be located in the Throgs Neck community in the Bronx. As a consequence of Iroquois' proposals, Consolidated Edison would need to construct in the Bronx approximately 13,000 feet of non-jurisdictional 30-inch diameter line from its Hunts Point compressor station to an interconnect with Iroquois in Throgs Neck.

As required by NEPA, the draft EIS for the Eastchester project examines numerous alternatives and route variations to Iroquois' proposal. The draft EIS recommends a route variation, known as the Hunts Point shallow water route variation, because it is a mostly all-water pipeline route to Consolidated Edison's Hunts Point compressor station. Basically, the only land construction would take place in an industrial park on Hunts Point. The draft EIS recommends the Hunts Point shallow water route variation over Iroquois' proposed route and other route variations because it would, among other things, avoid routing the pipeline through residential neighborhoods, limit in-street construction to an industrial area, reduce the line that Consolidated Edison needs

¹⁰⁴Iroquois Gas Transmission System, L.P., Docket No. CP00-232-000, et al., filed on April 28, 2000.

¹⁰⁵Mount Vernon's November 15 comments at 36.

to construct from 13,000 to 3,000 feet, avoid crossing navigation channels, reduce construction related impacts to navigation, avoid areas frequented by heavy ship and barge traffic, and avoid areas of swift currents and shifting sediments.¹⁰⁶

Likewise, in this proceeding, the final EIS examines numerous alternatives to Millennium's proposal that would avoid Mount Vernon. These alternatives include the Iroquois Pipeline System alternative, the Tennessee Pipeline System alternative, the Texas Eastern and Algonquin Pipeline System alternative, the ANR/Independence/Texas Eastern System alternative, the Algonquin/Iroquois Pipeline System alternative, the Eastchester System alternative, and the Transcontinental Pipeline alternative.¹⁰⁷ In each case, the final EIS determines that the alternative was inferior to Millennium's proposals. In addition, the final EIS examines three route alternatives through Mount Vernon.¹⁰⁸ The final EIS determines that each of these route alternatives would be longer than Millennium's proposed route and pass through the intersection of South 8th Avenue and West 4th Street.

We recognize that construction in a highly populated residential and commercial area of a city like Mount Vernon is not ideal. We also recognize that the draft EIS in Iroquois identified a route variation that avoided the Throgs Neck area of the Bronx. Here, despite the examination of numerous alternatives and route variations, the final EIS concludes that no alternatives exist that avoid construction in Mount Vernon. The fact that the draft EIS found an alternative that avoided a Throgs Neck area in Iroquois, while the final EIS in this proceeding did not find an alternative to construction in a residential area in Mount Vernon does not create an Equal Protection Clause or Civil Rights Act violation. We see no dissimilar treatment to the communities involved in these two proceedings.

5. Other Issues

Mount Vernon also contends that the Commission failed to adequately discuss the need for Millennium's project, as required by the Council on Environmental Quality's regulations implementing NEPA. Contrary to Mount Vernon's assertion, section 1.1 of the final EIS discusses the purpose and need for Millennium. The need for this project is also discussed in this order.

¹⁰⁶The Iroquois draft EIS at 5-4 to 5-6.

¹⁰⁷See section 3.2 of the final EIS.

¹⁰⁸See section 6.3.17 of the final EIS.

In addition, Mount Vernon contends that the Commission improperly failed to consider the Consolidated Edison facilities that must be constructed in connection with Millennium's project. Consolidated Edison anticipates that it may have to alter or expand its existing natural gas pipeline delivery system to transport the natural gas to Millennium's ultimate end users. However, the location of those end users, the amount of natural gas they may need, and the potential alterations to Consolidated Edison's system required to transport the gas is not known. In short, there is simply insufficient information available to analyze at this time. Thus, Mount Vernon's claims that we have segmented our analysis and failed to analyze related cumulative impacts must fail.

N. Alternatives

The final EIS evaluates fifteen system alternatives, including Texas Eastern's and Algonquin's alternative, using varying combinations of existing pipeline systems or proposed expansions of these systems. These system alternatives were identified to minimize or avoid impacts associated with the Lake Erie and Hudson River crossings, or to minimize overall environmental impact. The final EIS concludes that these system alternatives were not reasonable or practical for varying reasons, including the potential for at least equal or greater environmental impact, construction constraints, and the cost differential associated with the expansion that would affect the likelihood of the project ever being proposed. We concur with this finding.

The final EIS examines nine major route alternatives, the most significant being the ConEd Offset/Taconic Parkway Alternative discussed below. These include two major route alternatives around Lake Erie, one alternative across Lake Erie with a different landing location, one major route alternative across New York State, two alternative locations for the Hudson River crossing, and three major route alternatives in Westchester County. With the exception of the ConEd Offset/Taconic Parkway Alternative, the final EIS concludes that none of these major route alternatives were reasonable or practical. In addition, the final EIS evaluates 26 route variations proposed by landowners and 17 line changes proposed by Millennium to address landowner concerns. Of these, our staff recommends that Millennium incorporate 14 of the variations and 17 line changes. We find that these line changes and route variations would reduce impacts on environmental resources or accommodate development plans and should be adopted.

O. ConEd Offset/Taconic Parkway Alternative

This alternative is in Westchester County and accounted for the majority of comments received on the supplemental draft EIS. The ConEd Offset/Taconic Parkway Alternative was proposed by the municipalities of Briarcliff Manor, Croton-on-Hudson,

and Ossining in response to staff's suggestion in the supplemental draft EIS of the ConEd Offset/State Route 100 Alternative as a compromise between the original proposal that was located entirely within the Consolidated Edison's right-of-way and Millennium's 9/9A Proposal, that minimized use of the Consolidated Edison right-of-way but required construction along U.S. Route 9 and State Routes 9A and 100. The original route, the ConEd Offset/State Route 100, and the ConEd Offset/Taconic Parkway Alternatives are described and evaluated in the final EIS.

There is no clear environmental advantage between the 9/9A Proposal and the ConEd Offset/Taconic Parkway Alternative since they affect different resources. These routes are not popular with the people who would be affected by its construction.¹⁰⁹ Nevertheless, both routes could be constructed with limited adverse impacts and staff has recommended additional mitigation measures to reduce impact. The final EIS describes the impacts along these routes and the results of our staff's analysis. The ConEd Offset/Taconic Parkway Alternative has the advantage of being on an existing utility right-of-way for over half of its length, rather than within the narrow transportation corridor formed by U.S. Route 9 and State Routes 9A and 100. Further, Millennium and the NYPSC agreed to stringent safety specifications in a supplemental Memorandum that would be part of the design of the pipeline along the Consolidated Edison portion of the alternative route. The NYPSC states that it is agreeable to a further modification of the supplemental Memorandum that would allow the pipeline to be installed approximately 35 feet closer to the powerlines in certain locations near sensitive resources, such as residences and the Jane E. Lytle Memorial Arboretum. This would allow greater use of the existing powerline right-of-way, while minimizing tree clearing in sensitive areas and construction disturbance to adjacent property owners. Further, we will require Millennium to prepare a site-specific plan for construction in these areas.

The ConEd Offset/Taconic Alternative, however, will require construction within the Teatown Lake Reservation, which is a natural area that is used for recreational and educational purposes. The existing Consolidated Edison powerline cuts through this area and Millennium's route would follow it, although it would deviate away from the right-of-way because of topography at the crossing of Teatown Lake. Many comments were filed opposing the route through the Teatown Lake Reservation. The comments were addressed in section 6.2.6 of the final EIS. Millennium proposes to reduce its construction right-of-way to 50 feet through the Teatown Lake Reservation. Our staff

¹⁰⁹We received hundreds of comments in opposition to both routes.

recommends that Millennium develop a site-specific plan for pipeline construction and restoration with representative of Teatown Lake Reservation.¹¹⁰

Many commenters are concerned about the proximity of the alternative route to the Todd Elementary School (about 150 feet away), Briarcliff Manor Middle and High Schools (about 725 feet away), and Pace University (about 1,000 feet away). However, our staff believes that the mitigation measures specified in the NYPSC's Memorandum and supplemental Memorandum for pipeline design, construction, and operation within 1,500 feet of the Consolidated Edison's powerlines would be adequate.

Numerous commenters were concerned about the possibility of dioxins or other contaminants along Consolidated Edison's right-of-way becoming airborne as dust or otherwise released into the environment during blasting, excavation, or other construction activities. The final EIS evaluates the results of dioxin testing performed by the Village of Croton-on-Hudson (samples collected near the Consolidated Edison's right-of-way were tested for dioxins) and Millennium (samples collected on the Consolidated Edison's right-of-way were tested to determine the amount of residual herbicides containing 2,4-D and 2,4,5-T). Our staff's analysis of this data concluded that the samples collected by the Croton-on-Hudson from areas adjacent to Consolidated Edison's right-of-way showed levels of 2,3,7,8-TCDD that were well below regulatory guidelines for cleanup. The samples collected by Millennium showed levels of the residual herbicides 2,4-D and 2,4,5-T that were also well below regulatory guidelines for cleanup. Thus, staff did not recommend additional dioxin testing.

With these considerations in mind, the final EIS finds that the ConEd Offset/Taconic Parkway Alternative is preferable to the 9/9A Proposal. We concur with this finding.

P. Conclusion

We conclude that construction and operation of Millennium's pipeline would result in impacts from Lake Erie to eastern New York that would be locally significant. Most notably, during the construction period, the project would cause a variety of adverse impacts. Although these impacts may be mitigated extensively through proposed and recommended mitigation measures, many are unavoidable.

The most significant unavoidable impacts are turbidity and sedimentation in Lake Erie and the Hudson River; direct and indirect impacts on the federally-endangered

¹¹⁰Appendix E, condition 64.

shortnose sturgeon and federally-managed EFH in the Hudson River; damage to farm soils, especially in the black dirt area in Orange County; permanent conversion of about 26.3 acres of forested wetland to non-forested wetland within the permanent right-of-way; and disturbance of residential communities in Westchester County, including disruption caused by in-street construction in the densely populated City of Mount Vernon. Although we have examined many alternatives, including expansion of existing pipeline systems both north and south of Lake Erie and from different directions into New York City, we have been unable to find an alternative that would not create similar disturbances to other locations, other landowners, and other environmentally sensitive areas in New York or neighboring states.

Impacts associated with the project would be most significant during the construction period. Our staff developed specific mitigation measures, in addition to those proposed by Millennium, that would be appropriate and reasonable for construction and operation of the proposed facilities. Millennium has agreed to implement the construction and restoration procedures identified in its Environmental Construction Standards – which incorporates the staff's Upland Erosion Control, Revegetation and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures – and in the final EIS. Millennium must also comply with the Endangered Species Act, Clean Water Act, Coastal Zone Management Act, and the National Historic Preservation Act before construction can begin. We conclude that compliance with these measures would reduce the environmental impact of this proposal.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹¹¹

Millennium shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Millennium. Millennium shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

¹¹¹See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

At the hearing held on December 19, 2001, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) In Docket Nos. CP98-150-000 and CP98-150-002, a certificate of public convenience and necessity is issued under section 7(c) authorizing Millennium to construct and operate the proposed pipeline to the city limits of Mount Vernon and to lease capacity on the pipeline to Columbia, as more fully described in the application, as amended and supplemented, and in this order.

(B) Millennium shall negotiate with elected officials and interested parties and citizens in Mount Vernon and work toward reaching an agreement on a route to an interconnection with Consolidated Edison, within 60 days of the date of this order.

(C) In Docket No. CP98-151-000, Columbia is granted permission and approval under section 7(b) to abandon the facilities more fully described in Columbia's application and in this order.

(D) In Docket No. CP98-151-000, Columbia is issued a certificate of public convenience and necessity under section 7(c) authorizing it to lease capacity from Millennium as more fully described in the application and in this order.

(E) In Docket No. CP98-151-000, Columbia is issued a certificate of public convenience and necessity under section 7(c) authorizing it to construct overpressure protection equipment, as more fully described in the application and in this order.

(F) In Docket No. CP98-154-000, a blanket transportation certificate is issued to Millennium under Subpart G of Part 284 of the regulations.

(G) In Docket No. CP98-155-000, a blanket construction certificate is issued to Millennium under Subpart F of Part 157 of the regulations.

(H) In Docket No. CP98-156-000, a Presidential Permit and authorization under section 3 is issued to Millennium to construct and operate facilities on the United States – Canada border.

(I) Millennium shall comply with Part 157 of the regulations, especially paragraphs (a), (c)(1), (c)(2), (c)(3), (e), and (f) of section 157.20.

(J) Millennium shall not commence construction of its facilities prior to TransCanada's and St. Clair's receipt of all necessary NEB approvals.

(K) Millennium's facilities must be constructed and made available for service within two years from the date of the order in this proceeding, pursuant to paragraph (b) section 157.20 of the regulations.

(L) The authorization granted in Ordering Paragraph (A) is conditioned on Millennium's filing sixty days from the date of the order, rates consistent with the revised capital structure and pro forma tariff sheets that reflect compliance with the GISB standards, Order No. 637, and the other modifications discussed in this order.

(M) Millennium shall file executed firm transportation contracts with its shippers prior to construction of any authorized facilities.

(N) Millennium shall comply with the environmental conditions in Appendix G to the order.

(O) Millennium shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Millennium. Millennium shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(P) Millennium shall make a filing within three years after its in-service date, either justifying its existing recourse rates or proposing alternative rates, as discussed in this order.

(Q) Millennium shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost based rates.

(R) Millennium shall make an in-service notification filing upon the initiation of service over its leased facilities by Columbia and upon initiation of service for the remainder of the project.

(S) The authorization granted in Ordering Paragraph (B) is conditioned on Columbia's filing to remove Line A-5 costs from its rate base, cost of service, and rates when it files to recover the Account 858 costs associated with the lease payments to Millennium through Columbia's TCRA.

(T) Columbia shall notify the Commission within 10 days of the date of the abandonment of Line A-5 and the overpressure facilities.

(U) Millennium and Columbia shall adhere to the accounting requirements discussed in this order.

(V) The untimely motions to intervene in Docket Nos. CP98-150-000, CP98-150-002, CP98-154-000, CP98-155-000, CP98-156-000, and CP98-151-000 are granted.

(W) All answers, responses, comments, and protests filed in Docket Nos. CP98-150-000, CP98-150-002, CP98-154-000, CP98-155-000, CP98-156-000, and CP98-151-000 are granted.

(X) All motions to dismiss, motions for technical conference, and motions to compel discovery are denied.

(Y) All requests for comparative hearings and for evidentiary hearings are denied.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix A

Motions to Intervene in Docket Nos. CP98-150-000,
CP98-154-000, CP98-155-000, and CP98-156-000

Timely Interventions

ANR Pipeline Company
Allied Signal Inc.
Amoco Canada Petroleum Col Ltd. and Amoco Energy Trading Corporation (joint motion)
Brooklyn Union Gas Company
Bruce, Jean C.
Central Hudson Gas & Electric Corporation
Cities of Charlottesville and Richmond, Virginia (joint motion)
Cincinnati Gas & Electric Company and the Union Light, Heat and Power Company (joint motion)
Columbia Energy Services Corporation
Consolidated Edison Company of New York, Inc.
County of Chautauqua, New York
County of Rockland, New York
Delmarva Power & Light Company
Dinga, Assemblyman Jay J.
Dominion Transmission, Inc.
Duke Energy Trading and Marketing, L.L.C.
Dynegy Marketing and Trade
El Paso Gas Services Company
Engage Energy US, L.P.
Enron Capital & Trade Resources Corp.
Foothills Pipe Lines Ltd.
Gardner, Clark
Great Lakes Gas Transmission Limited Partnership
Harris, Donald
Independence Pipeline Company
Iroquois Gas Transmission System, L.P.
Keller, Robert N. Jr.
Kowalczyk, Michael
Lewis, Corinna S. and Alfred R.
Lewis, Randy E.

Market Hub Partners, L.P.
Mateo, Ed
Michigan Consolidated Gas Company
MidCon Gas Services Company
Midwestern Gas Transmission Corp.
Mount St. Francis Hermitage
Mountaineer Gas Company
National Fuel Gas Distribution Corporation
National Fuel Gas Supply Corporation
Natural Gas Pipeline Company of America
New England Customer Group¹¹²
New Jersey Natural Gas Company
New York State Department of Environmental Conservation
New York State Electric & Gas Corporation
North Carolina Public Service Commission
Orange and Rockland Utilities, Inc.
PanCanadian Petroleum Limited and PanCanadian Petroleum Company (joint motion)
Portland Natural Gas Transmission System
Process Gas Consumers Group
Prislupsky, Frank
Public Service Company of North Carolina, Inc.
Public Service Electric and Gas Company
Renaissance Energy (US) Inc.
Town of Cortlandt, New York
Town of Greenburgh, New York
Town of Ripley, New York
Rochester Gas and Electric Corporation
Rockland County Conservation Association, Inc.
Rockland County Division of Environmental Resources
St. Clair Pipelines (1996) Ltd.
Southern Connecticut Gas Company

Southern Tier Landowners Association

¹¹²The New England Customer Group consists of Bay State Gas Company, The Berkshire Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Energy North Natural Gas, Inc., Essex County Gas Company, Fitchburg Gas and Electric Light Company, City of Holyoke, Massachusetts, Gas and Electric Department, Northern Utilities, Inc., The Providence Gas Company, Valley Gas Company, and City of Westfield Gas and Electric Light Department.

Southern Tier Municipal Coalition
Stand Energy Corporation
Steinfels, Peter
Stiles, Donald J.
Supa, Peter
Tennessee Gas Pipeline Company
Texas Eastern Transmission Corporation
Town of Yorktown, New York
TransCanada Gas Services, A Division of TransCanada Energy Limited
TransCanada PipeLines Limited
Transcontinental Gas Pipe Line Corporation
UGI Utilities, Inc.
Vector Pipeline, L.P.
Village of Briarcliff Manor, New York
Virginia Natural Gas, Inc. and The East Ohio Gas Company (joint motion)
Washington Gas Light Company
Westchester County Department of Planning
West Branch Conservation Association, Inc.

Late Interventions

City of Yonkers, New York
Coleman, Robert
Independent Oil & Gas Association of West Virginia
Kelly, Robert N.
Long Island Lighting Company
Meinzer, Raymond M.
Mount Vernon Oversight and Review Coalition
Multiple Intervenors¹¹³
New York City Department of Environmental Protection
Nichol, Charles
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company

Riverkeeper, Inc.

¹¹³Multiple Intervenors is an unincorporated association of approximately 65 large commercial and industrial energy consumers that operate facilities in New York, including IBM.

Theodore Gordon Flyfishers, Inc.
Town of Mount Pleasant, New York
Town of New Castle, New York
Town of Ossining, New York
Trout Unlimited and New York State Council of Trout Unlimited (joint motion)
Union Gas Limited
United States Department of the Interior
Village of Ardsley, New York
Village of Croton-on-Hudson, New York

Notice of Intervention

Public Service Commission of the State of New York

Appendix B

Motions to Intervene in Docket No. CP98-150-002

Timely Interventions

Cata, Manuel I.
Cheevers, Mary W.
City of Yonkers, New York
Consolidated Edison Company of New York, Inc.
Historic Hudson Valley
Iroquois Gas Transmission System, L.P.
LCOR Asset Management LP and Eastview Holdings, LLC
Mendez, Alfredo F.
Metro-North Commuter Railroad Company
Molodofsky, Deborah
New York State Reliability Council
Purdue Pharma L.P.
St. Clair Pipelines (1996) Ltd.
Town of Greenburgh, New York
TransCanada PipeLines Limited
Vector Pipeline L.P.
Village of Croton-on-Hudson, New York

Late Interventions

Carr, Ian J.
Rice, James D.

Appendix C

Motions to Intervene in Docket No. CP98-151-000

Timely Interventions

ANR Pipeline Company
AlliedSignal Inc.
Central Hudson Gas & Electric Corporation
Cincinnati Gas & Electric Company and the Union Light, Heat and Power Company
(joint motion)
Cities of Charlottesville and Richmond, Virginia (joint motion)
Coleman, Robert
Delmarva Power and Light Company
Dominion Transmission, Inc.
El Paso Gas Services Company
Engage Energy US, L.P.
Enron Capital & Trade Resources Corp.
Great Lakes Gas Transmission Limited Partnership
Harris, Donald
Independence Pipeline Company
Kowalczyk, Michael
Lewis, Randy
Market Hub Partners, L.P.
Midwestern Gas Transmission Corp.
Mountaineer Gas Company
National Fuel Gas Distribution Corporation
National Fuel Gas Supply Corporation
New England Customer Group¹¹⁴
New Jersey Natural Gas Corporation
New York State Electric & Gas Corporation
Nichol, Charles
North Carolina Natural Gas Corporation
Orange and Rockland Utilities, Inc.
Piedmont Natural Gas Company, Inc.

¹¹⁴ A list of the members of the New England Customer Group is included in the list of intervenors in Docket No. CP98-150-000, et al.

Prislupsky, Frank
Process Gas Consumers Group
Public Service Company of North Carolina, Inc.
Public Service Electric and Gas Company
Souther Tier Landowners Association
Southern Tier Municipal Coalition
Stand Energy Corporation
Steinfels, Peter
Stiles, Donald
Supa, Peter
Tennessee Gas Pipeline Company
TransCanada PipeLines Limited
Transcontinental Gas Pipe Line Corporation
UGI Utilities, Inc.
Virginia Natural Gas, Inc. and The East Ohio Gas Company (joint motion)
Washington Gas Light Company
West Branch Conservation Association, Inc.

Late Interventions

Consolidated Edison Company of New York, Inc.
Theodore Gordon Flyfishers, Inc.
Town of Mount Pleasant, New York
Town of Ossining, New York
Trout Unlimited and the New York State Council of Trout Unlimited (joint motion)
United States Department of Interior

Notice of Intervention

Public Service Commission of the State of New York

Appendix D

Portion of Tariff Cited	Tariff Sheet Number	Reason For Noncompliance
Section 3.8 of Rate Schedule FTS and Section 3.4 of Rate Schedule ITS	21 and 25, respectively	"Section 1.65" should be "Section 1.66."
Rate Schedule PAL	28-30	No time factor established for service and no provision for recall of loaned gas in the event volumes are required for system operations. See <u>ANR Pipeline Company</u> , 77 FERC ¶ 61,080 (1986).
Section 1.43 of General Terms	61	"Negotiated rate" is not properly defined. The definition is too narrowly drawn. It must be expanded to include rates that can vary over the term of the contract based on a formula.
Section 3.3(ii) of General Terms	71	"creditworthy" should read "not creditworthy."
Section 3.8 of General Terms	72 and 73	No provision for refunds of prepayments if for some reason no contract is signed or bid is moved off the bid list.
Sections 4.2(c) and 4.2(d)(3) of General Terms	79	These two provisions are inconsistent. Section 4.2(c) provides that the bid shall not exceed the then-effective maximum reservation rate for the applicable service. Section 4.2(d)(3) provides for bids exceeding the recourse rate.
Section 11.4 of General Terms	109	Service may not be terminated until Millennium receives abandonment authorization.

Section 15	116-122	Tariff should provide that until September 30, 2002, the maximum rate ceiling does not apply to capacity lease transactions of less than one year. Section 284.8(h)(2)(i).
Section 15.1(b)(16) of General Terms	117	This provision requires further explanation or should be removed.
Section 15.3(f) of General Terms	119	This provision should omit the last five words: "plus the applicable Usage rate." Section 15.8 permits Millennium to bill the releaser only the full reservation charge less the reservation rate bid by replacement shipper or the reservation rate portion of replacement shipper's one-part charge.
Section 15.7(c) of General Terms	121	This provision needs to be elaborated further, in particular, as to impact on small customer participation in capacity release.
Section 16 of General Terms	125	This provision omits any reference to sharing of reservation charge burden imposed during period of <u>force majeure</u> . See <u>Tennessee Gas Pipeline Company</u> , 80 FERC ¶ 61,070, at p. 61,199 (1997).
Section 17.6(d) of General Terms	128	With respect to the first sentence: "A Shipper receiving relief under this Section shall compensate any other Shipper injured thereby," Millennium should explain what criteria would be used to determine if a shipper has been injured.
Section 20.1 of General Terms (line 1)	138	The words "in its sole discretion" should be removed and replaced with "in a not unduly discriminatory manner."

Section 22 of General Terms	141	This provision should be modified to require that the shipper, not the party on whose behalf the shipper is acting, must have title to the gas. See <u>Enron Energy Services, Inc.</u> , 84 FERC ¶ 61,222 (1998), <u>order on reh'g</u> , 85 FERC ¶ 61,221 (1998).
Section 24.4(e) of General Terms	144	Section 32.3 of the General Terms - ACA Filing.
Section 32.3 of the General Terms	158	Nothing in the regulations prohibits the Commission from suspending or placing a refund obligation of a request to recover the ACA charge.

APPENDIX E - NOT ON DISKETTE BUT WILL BE AVAILABLE
IN RIMS AND ON CIPS.

Appendix F

Comparison of Resources along Pipeline Alternative Routes in Mount Vernon

Route	Residences		Commercial	Misc.
	Houses	Apt Buildings		
Proposed	71	18	18	2 Fire sta.; Hamilton Elem.; Nursing Sch.; Rec. center; church
Alt A	121	23	37	Water Dept; RR transit, route under elevated train; health center; Greater Cent. Church
Alt B	98	10	38	Water Dept; health center; Greater Cent. Church
Alt C	139	10	27	Water Dept; health center; Greater Cent. Church

Comparison of Pipeline Lengths of the Alternative Routes

Route	Total length (feet)	Length in Commercial Area (feet)	Length in Residential Area (feet)	Length in Bronx (feet)
Proposed	5,800	1,000	4,800	0
Alt. A	9,500	5,100	4,400	5,100
Alt. B	8,000	4,400	3,600	0
Alt. C	8,000	3,700	4,300	1,500

Appendix G

Environmental Conditions for Millennium's Project

1. Millennium shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the final EIS, unless modified by this order. Millennium must:

- a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
- b. justify each modification relative to site-specific conditions;
- c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
- d. receive approval in writing from the Director of OEP **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to insure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

- a. the modification of conditions of this order; and
- b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Millennium shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the final EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of any construction**, Millennium shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Millennium shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction** in or near that area.

This requirement does not apply to route variations required herein or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of this certificate and **before construction** begins, Millennium shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Millennium will implement

the mitigation measures required by this order. Millennium must file revisions to the plan as schedules change. The plan shall identify:

- a. how Millennium will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
- d. what training and instructions Millennium will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
- e. the company personnel (if known) and specific portion of Millennium's organization having responsibility for compliance;
- f. the procedures (including use of contract penalties) Millennium will follow if noncompliance occurs; and
- g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.

7. Millennium shall employ at least a team of (i.e., two or more, or as may be established by the Director of OEP) environmental inspectors per construction spread. The environmental inspectors shall be:

- a. responsible for monitoring and ensuring compliance with all mitigative measures required by this order and other grants, permits, certificates, or other authorizing documents;
- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
- c. empowered to order correction of acts that violate the environmental conditions of this order, and any other authorizing document;
- d. a full-time position, separate from all other activity inspectors;
- e. responsible for documenting compliance with the environmental conditions of this order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
- f. responsible for maintaining status reports.

8. Millennium shall file updated status reports prepared by the lead environmental inspector with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:

- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
- b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspectors during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
- c. corrective actions implemented in response to all instances of noncompliance, and its cost;
- d. the effectiveness of all corrective actions implemented;

- e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy its concerns; and
- f. copies of any correspondence received by Millennium from other Federal, state or local permitting agencies concerning instances of noncompliance, and Millennium's response.

9. Millennium must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service,** Millennium shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
- b. identifying which of the certificate conditions Millennium has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Millennium shall hire and fund a third-party contractor, to work under the direction of the Commission staff, for the sole purpose of monitoring Millennium's compliance with the environmental conditions attached to the order, including all measures proposed by Millennium. A draft monitoring program shall be developed by Millennium and filed with the Commission for review and approval of the Director of OEP, along with a proposal from potential contractors that will be available to provide the monitoring and reporting services. The monitoring program shall include the following elements:

- a. the employment by the contractor of one to two full-time, on-site monitors per construction spread;

- b. the employment by the contractor of a full-time compliance manager to direct and coordinate with the monitors, manage the reporting systems, and provide technical support to the Commission staff;
- c. a systematic strategy for the review and approval by the contract compliance manager and monitors of variances to certain construction activities as may be required by Millennium based on site-specific field conditions;
- d. the development of an Internet web site for the posting of daily or weekly inspection reports submitted by both the third party monitors and Millennium's environmental inspectors; and
- e. a discussion of how the monitoring program could incorporate and/or be coordinated with the monitoring or reporting that may be required by other Federal and state agencies.

12. **Prior to construction**, Millennium shall modify section II.C.2 of its Environmental Construction Standards so that it is consistent with section V.F.3.d of our Upland Erosion Control, Revegetation and Maintenance Plan which states that no more than one ton of wood chips per acre be spread on the construction right-of-way.

13. **Prior to construction**, Millennium shall modify section II.F of its Environmental Construction Standards to state that restoration of residential properties will begin immediately after trench backfilling.

14. **Prior to construction**, Millennium shall modify sections II.G and II.J of its Environmental Construction Standards to state that it will immediately restore all trails and to state that it will immediately restore all roads, respectively, after backfilling the trench so that they are opened quickly for full public use.

15. **Before construction**, Millennium shall file with the Secretary the results of surveys conducted in the area between mileposts 90.5 and 91.3 when access is obtained, and any mitigation plans proposed to minimize impact on the "Rock City" geologic formations for review and written approval of the Director OEP.

16. Millennium shall modify its Environmental Construction Standards to include a contingency plan, developed in consultation with the NYSDA&M, for overwintering agricultural areas and file it for review and written approval of the Director of OEP **before construction**. If the NYSDA&M's agriculture inspector directs

Millennium to delay final cleanup, Millennium shall file a report with the Secretary identifying these locations by milepost.

17. Millennium shall continue consultations with the NYSDA&M regarding specialized construction procedures in agricultural areas that shall be incorporated into the Environmental Construction Standards. The final Environmental Construction Standards shall be filed with the Secretary, **before construction**, for review and written approval of the Director of OEP.

18. Millennium shall identify aquifer protection districts and watersheds on its construction alignment sheets.

19. Millennium shall expand its Spill Prevention, Containment, and Control Plan to specifically include the following:

- a. a requirement that all construction equipment be inspected daily for leaks before work;
- b. a listing of specific water supply, municipal, or state officials to be contacted in the event of a reportable spill; and
- c. a listing of the requirements of local or state officials concerning construction in aquifer protection areas and public water supply watersheds.

20. Millennium shall file with the Secretary the location by milepost of all drinking water wells and springs within 150 feet of the construction work area and their distance from the construction work area, **before construction**. In addition, Millennium shall specify which wells would be within perched water systems.

21. Millennium shall include in its weekly construction progress reports any complaints concerning water supply yield or quality and how each was resolved. **Within 30 days of placing the facilities in service**, Millennium shall file a summary report identifying all potable water supply systems damaged by construction and how they were repaired.

22. Millennium shall file with the Secretary a site-specific plan to complete the open-cut crossings of Cassadaga Creek (milepost 59.9), State Drainage Ditch (milepost 72.9), and Catatonk Creek (milepost 228.1) within 48 hours, **prior to construction**, or it

shall file a site-specific plan explaining why more time is needed for the crossings for review and written approval of the Director of OEP.

23. Millennium shall file with the Secretary a contingency plan for the crossing of each waterbody if the directional drill (Ramapo River, milepost 370.0; Croton River, milepost 396.8) or conventional bore (Bemus Creek, milepost 55.6; Great Valley Creek, milepost 94.7; Wrights Creek, milepost 95.8; Canisteo River, milepost 171.5; Nanticoke Creek, milepost 240.7; Wallkill River, milepost 350.7; and Intermittent Ditch to Eurich Ditch, milepost 353.9) is unsuccessful. **Prior to construction**, Millennium shall file with the Secretary for review and written approval of the Director of OEP, a plan with the set of criteria it will use to identify when a horizontal directional drill or bore is unsuccessful. This shall be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. Millennium shall file this plan **concurrent with its application** to the COE and NYSDEC for a permit to construct using this plan. The Director of OEP must review and approve this plan in writing **before construction of the alternate crossing plan**.

24. Millennium shall consult with the COE and expand the site-specific crossing plan for the Genesee River (milepost 137.3) to include construction and restoration mitigation measures to protect the integrity of the flood control berm. The revised plan and COE comments shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

25. **Before construction**, Millennium shall file with the Secretary for review and written approval by the Director of OEP, the finalized plan for the Lake Erie crossing. The plan shall include:

- a. the trench depth recommendations determined by the Cold Regions Research and Engineering Laboratory analysis;
- b. the manual for handling emergency repair of the pipeline in Lake Erie;
- c. finalized construction procedures, including construction schedules and timing, procedures for minimizing and monitoring dispersion of the turbidity plume and sediment deposition, and a description of the mitigative actions that Millennium would take if the observed turbidity plumes exceed the predicted plumes; and

- d. specific information on the discharge rate of spoil in the lake bottom in modeled zones F, G, H, I, and J after the construction contractor and jet sled equipment have been selected.

26. Millennium shall **not begin construction** of any portion of the project **until** it files with the Secretary a copy of the appropriate permits from Canada's NEB regarding construction of the Canadian portion of the project.

27. **Prior to construction**, Millennium shall file with the Secretary: (1) the finalized Hudson River Sampling Plan developed to meet the NYSDEC's section 401 Water Quality Certificate and (2) a work plan and schedule for the Hudson River crossing showing completion of construction activities within the September 1 to November 15 time window, including contingency plans for delays due to weather, equipment malfunction, or other work slowdowns for review and written approval of the Director of OEP. All monitoring data collected during construction of the Hudson River shall be filed with the Secretary at the same time it is submitted to the NYSDEC.

28. **Prior to construction**, Millennium shall file with the Secretary the results of any alternative crossing locations developed in consultation with the NYCDEP, the site-specific crossing plan and design for the Catskill Aqueduct (approximate milepost 418.2), the independent engineering assessment of the proposed site-specific crossing plan, and any comments from the NYCDEP on the alternative crossing locations and the site-specific crossing plan. The final Catskill Aqueduct crossing plan shall be filed with the Secretary for review and written approval of the Director of OEP.

29. Millennium shall develop construction and restoration plans for the Mongaup Wildlife Management Area (mileposts 323.8 to 330.2) and the Doris Duke Wildlife Sanctuary (mileposts 364.9 to 365.8) in consultation with the NYSDEC, and New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP) and the Palisades Interstate Park Commission. The final plans shall be filed with the Secretary **before construction**.

30. If Millennium develops wildlife enhancement areas in consultation with the FWS, COE, NYSDEC, and landowners, it shall identify the locations of these wildlife enhancement areas on the construction alignment sheets and file them with the Secretary **before construction**.

31. **Before construction**, Millennium shall complete consultations with the New York Natural Heritage Program and the National Park Service (NPS), as appropriate to determine if any unique natural communities would be crossed, including the diverse

vegetation communities in Chautauqua County between mileposts 54.4 and 56.4, and the old growth eastern hemlock forest between mileposts 279.2 and 279.3 in Delaware County. Millennium shall file with the Secretary, for review and written approval by the Director of OEP **before construction**, mitigation plans developed through these consultations. The mitigation plans shall include all correspondence, telephone logs, locations of each area by milepost, crossing length, acreage of vegetative community affected, and proposed mitigation.

32. **Prior to construction**, Millennium shall include all of the terms and conditions of the NMFS' incidental take statement on its final site-specific Hudson River crossing plan, and file the plan with the Secretary for review and written approval from the Director of OEP. The terms and conditions are:

- a. trained NMFS-approved observers must be present on the dredge and backfill barge for the duration of the project;
- b. if any whole shortnose sturgeon (alive or dead) or sturgeon parts are taken incidental to the project, Carrie McDaniel (978-281-9388) or Mary Colligan (978-281-9116) must be contacted within 24 hours of the take. An incident report for shortnose sturgeon take (for a copy, see the NMFS' September 14, 2001 biological opinion that is available for viewing on the Commission's internet site at www.ferc.gov; go to the "RIMS" link; and follow instructions to access the document) shall also be completed by the observer, and sent to Carrie McDaniel via fax (978-281-9394) within 24 hours of the take. Every incidental take (alive or dead) shall be photographed and measured, if possible; and
- c. silt curtains shall be bottom weighted, and run surface-to-bottom around the area being backfilled in order to effectively minimize suspended sediment concentrations.

In addition, if facilities are not constructed within one year from the date of issuance of the certificate, Millennium should consult with the FWS and NMFS to determine if additional consultations or surveys are required.

33. No construction shall begin between milepost 339.9 (intersection of Peenpack Trail and Martin Road) and milepost 341.7 (Shinhollow Road) until the bore of the Neversink River is successfully completed. Millennium shall also abandon the existing pipeline crossing of the Neversink River in place.

34. In the event that a bore cannot be completed at the proposed Neversink River crossing location (milepost 341.0), Millennium shall develop a contingency plan in consultation with the FWS, NYSDEC, and The Nature Conservancy. The plan, at a minimum, must:

- a. identify an alternative crossing location, and/or alternative route and construction methods (if required);
- b. include an analysis of the environmental impacts associated with construction of the contingency plan (i.e., definition of the impact area or construction work areas); and
- c. include a survey of the entire construction work area and area of potential effect by a biologist qualified to identify dwarf wedge mussels, as required.

All survey work must use FWS-approved methodologies, and must be completed **before the start of any alternative construction activity** in the project segment between mileposts 339.9 and 341.7. The mitigation plan and all associated consultation documentation shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

35. If flows are low enough, Millennium shall use a flume or a dam and pump construction technique for the crossing of Cassadaga Creek (milepost 59.9) and shall complete all in-stream work between July 1 and November 30.

36. Millennium shall consult with the FWS regarding the site-specific plan being developed with the NYSDEC for the new permanent boat launch facility at the Mongaup River/Rio Reservoir (milepost 330.0) to protect bald eagles and their habitat. Millennium shall file the final plan and all comments received from the NYSDEC and FWS on the new boat launch facility with the Secretary **before construction**.

37. If blasting is required in designated bald eagle activity areas when bald eagles are present, Millennium shall develop with the NYSDEC and FWS a construction plan that includes the potential amount, location, and schedule of the required blasting. The final construction plans, and all associated consultation documentation, shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

38. Millennium shall contact the FWS and NYSDEC in the fall the year before the start of construction to determine if any additional bald eagle nests have been found in the vicinity of the project area. Documentation of the results of this consultation shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

39. Millennium shall continue consultations with the FWS and NYSDEC regarding any other requirements for surveying, monitoring, or avoiding special status species (the bean villosa, long head darter, and green floater) or their habitats. The results of these consultations, including copies of all correspondence, and proposed mitigation shall be filed with the Secretary **before construction** for review and written approval by the Director of OEP.

40. Millennium shall employ at least one wetland specialist per construction spread. The wetland specialist must be familiar with the existing hydrologic patterns of the affected wetlands within the construction work area and shall be present during final grading of these wetlands. The wetland specialist shall have the authority to direct any modifications to the final grade, as necessary, to ensure that the original hydrologic patterns of affected wetlands are restored to the fullest extent practicable.

41. Millennium shall not use an additional 25 feet of Columbia's existing right-of-way in wetlands crossed between mileposts 41.7 and 376.4.

42. Millennium shall use a non-seed carrying barrier (such as straw or fabric), determined in consultation with the NYSDEC and COE to separate wetland and non-wetland subsoils, where non-wetland subsoil from grading operations would be stored in wetlands. The barrier material shall be visible to the equipment operator when it is exposed during restoration. Millennium shall file the milepost location of the areas where these barriers are used in its weekly construction report.

43. Millennium shall establish an environmental mitigation complaint resolution procedure that would be in place throughout construction and restoration of the Millennium project. The procedure shall provide landowners and/or abutters with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the pipeline facilities and restoration of the right-of-way. **Prior to construction**, Millennium shall mail the complaint procedure to each landowner whose property will be crossed by the project and abutters whose properties are adjacent to a road or utility right-of-way that will be used for installation of the pipeline. The complaint resolution procedure must:

- a. include a local contact (and telephone number) and Millennium's "hotline" contact (and toll-free telephone number) that the landowner/abutter should first call with his/her concerns;
- b. indicate how long it will take after complaints/inquiries are made for Millennium to respond;
- c. indicate that the response will inform the caller how and when problems were or will be resolved; and
- d. instruct the landowner/abutter that if they are still not satisfied with the response from contacting Millennium's "hotline," then the Commission's Enforcement Hotline may be contacted at (877) 303-4340.

44. Millennium shall include in its weekly status report a table that contains the following information for each problem/concern reported:

- a. the identity of the caller and the date of the call;
- b. the construction alignment sheet number, property identification number, and milepost/survey station number of the property;
- c. a description of the concern/problem; and
- d. an explanation of how and when the problem was resolved, or why it has not been resolved.

45. Millennium shall continue consultations with New York State Electric and Gas Company (NYSEG) regarding the placement of the pipeline within or adjacent to the NYSEG powerline right-of-way (mileposts 232.2 to 243.5) and develop mitigation plans to reduce the risk associated with a pipeline accident during construction and operation of the pipeline. The plan and NYSEG's comments on the plan shall be filed with the Secretary for review and approval by the Director of OEP **before construction** may begin.

46. Millennium shall update the listing of residences within 50 feet of the construction work area and file this information with the Secretary **before construction**. For all previously unidentified residences closer than 25 feet to the construction work

area, Millennium shall file a site-specific plan with the Secretary for the review and written approval of the Director of OEP **before construction**.

47. If necessary, Millennium shall develop site-specific construction plans for construction adjacent to the Hamilton Elementary School, Fire Station No. 4 on Oak Street, and the fire station at South 7th Avenue and West 3rd Streets in Mount Vernon. These plans shall include measures to assure the safety of Hamilton Elementary School students while at school and going to and from school, and adequate movement of emergency fire equipment during in-street construction activities. These plans shall be developed in consultation with Mount Vernon and emergency service providers and filed with the Secretary, **prior to construction**, for the review and written approval of the Director of OEP.

48. Following consultation with appropriate authorities and community representatives, Millennium shall prepare site-specific construction and mitigation plans for Mount Vernon (mileposts 419.9 to 421.8). These plans shall address construction related issues, including:

- a. construction schedules and timing;
- b. traffic detours around construction activities;
- c. resident notification of construction schedules;
- d. alternate parking locations for loss of parking spaces;
- e. provisions for maintenance of access to businesses and residential buildings;
- f. provisions for maintenance of construction equipment to reduce air and noise pollution; and
- g. provisions for appropriate utility repair crews and materials to be on site at all times during construction in residential/commercial areas between mileposts 420.6 and 421.8.

If utilities to residential buildings are damaged and cannot be restored on the same day, Millennium must offer affected residents alternative housing and transportation to and from these alternative housing locations. The plans, with documentation of

consultation with appropriate authorities, shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

49. **Before construction**, Millennium shall provide each landowner affected by construction with a final construction alignment sheet showing the construction work area and pertinent information about how the pipeline would be constructed and restored on their property.

50. **Before construction** across the Metro-North Commuter Railroad Company railroad tracks in Westchester County, Millennium shall file the detailed plans and design drawings with the Commission, along with comments on the plans from Metro-North, for review and written approval by the Director of OEP.

51. **Before construction**, Millennium shall file with the Secretary all mitigation plans for construction of the pipeline and restoration of the construction right-of-way developed with the property owners identified in table 5.8.3.2-1 in the final EIS, for review and written approval of the Director of OEP.

52. Millennium shall continue consultations with the NPS to finalize the site-specific plan for the crossing of the Appalachian Trail at milepost 363.6. Millennium shall file the results of this consultation, and comments from the NPS and the State Historic Preservation Officer (SHPO), with the Secretary for review and written approval by the Director of OEP **before construction**.

53. Millennium shall provide off road vehicle control in forested areas as specified in its Environmental Construction Standards to any landowner or land manager that requests such controls along its construction right-of-way. If these controls extend off the construction right-of-way, Millennium shall conduct appropriate surveys in the off-right-of-way areas. The results of these surveys, and plans for off road vehicle controls that extend off the right-of-way, shall be filed with the Secretary before their installation.

54. **Prior to beginning construction** of any project facilities, Millennium shall file with the Secretary a determination of consistency with the New York State coastal zone management plan.

55. Millennium shall minimize the clearing of trees and vegetation that provide visual screening of an existing right-of-way from the adjacent residences. Where screening must be removed for safety considerations, Millennium shall offer to plant fast growing trees or shrubs within the temporary work areas where vegetative screening is

removed between a residence and existing right-of-way. Millennium shall file the milepost locations of areas where tree screening adjacent to residences would be removed **prior to construction**.

56. Millennium shall **defer construction** of facilities, and use of all staging, storage, and temporary work areas, and new or to-be-improved access roads **until**:

- a. Millennium files with the Secretary all additional cultural resources surveys and evaluation reports, and any required treatment plans, and the appropriate SHPO's comments on the reports and plans;
- b. the Advisory Council on Historic Preservation has been given the opportunity to comment on the project; and
- c. the Director of OEP reviews and approves all cultural resources reports and plans, and notifies Millennium in writing that construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE."

57. Millennium shall file a site-specific plan identifying how it would reduce construction noise during a directional drill near residences. The plan shall include projected daytime and nighttime noise levels at nearby residences and mitigation measures that would be used to minimize noise at these residences. The plan shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

58. Millennium shall prepare a report that contains the following information regarding the water supply system on the Supa property (approximate milepost 242.0):

- a. the elevation of the spring outlet and cistern;
- b. the water bearing stratum for the spring at source, if possible;
- c. the depth to water along the pipeline trench, and the water bearing strata along the pipeline trench and orthogonal (right angle) downhill to spring;

- d. if the pipeline trench or side hill cut would intersect the water bearing stratum that feeds the spring or the spring's water source, determine if the pipeline trench would convey water away from the spring based on trench elevations; and
- e. if the pipeline trench would convey water away from the spring, develop engineering and/or other mitigation measures (including a reroute up slope to avoid the water table) to maintain uninterrupted flow to the spring and cistern.

The report shall include site specific diagrams as necessary to illustrate the flow of water to the spring and cistern and shall be filed with the Secretary for review and written approval by the Director of OEP **before construction**.

59. **Before construction**, Millennium shall file with the Secretary for review and approval by the Director of OEP, a detailed blasting plan for construction along the ConEd Offset/Taconic Parkway Alternative. This plan shall include at a minimum:

- a. the blasting recommendations as filed by Consolidated Edison in its filings with the Commission on October 23 and November 7, 2000 and in any subsequent consultations;
- b. a listing by milepost of each location that would require blasting, either for the trench or to establish a level working right-of-way, as determined by core drilling, shallow refraction seismic surveys, or other geophysical means; and
- c. blasting specifications, including general provisions for storage of explosives, pre-blast operations (such as drill hole dimensions, type and size of charges, loading and firing, etc.) procedures for discharge of explosives and notification of the public, disposal of explosive materials, the maintenance of blasting records, and pre- and post-blast inspections.

60. Millennium shall restrict all construction activities across the Croton Primary Aquifer between mileposts 2.9 and 4.4 ConEd Offset/Taconic Parkway Alternative to the period between September 1 and October 30.

61. Millennium shall continue consultations with Jane E. Lytle Memorial Arboretum representatives regarding the specific measures it would implement to minimize impact on the arboretum and wetland W08CT (milepost 2.6) on the ConEd

Offset/Taconic Parkway Alternative. These measures shall include a provision that the pipeline be located to avoid construction disturbance to Wetland W08CT and to minimize impact on the drainage swales and streams that supply it. In addition, Millennium shall include provisions to complete all construction activities (grading through restoration) adjacent to the Arboretum (Alternative mileposts 2.5 to 2.7) at one time in the shortest time possible. Millennium shall file with the Secretary the final, site-specific plan that describes measures that would be implemented before and after construction, and includes scaled drawings identifying areas that would be disturbed within the arboretum and plans for restoration plantings and reseeded within the construction work area.

62. Millennium shall prepare site-specific mitigation plans for residential properties adjacent to the ConEd Offset portion of the ConEd Offset/Taconic Parkway Alternative where tree screening would be removed and specifically at Alternative mileposts 0.6, 0.8, 1.0, 3.1, and 7.1. For each property, prepare a dimensioned site plan that shows:

- a. the location of the residence in relation to the new pipeline, the Consolidated Edison right-of-way, and the nearest existing Consolidated Edison structures;
- b. the edge of the construction work area;
- c. the edge of the new permanent right-of-way;
- d. vegetation that would be removed or preserved;
- e. a description of how the property would be protected from construction activities, and
- f. a restoration plan that describes how the construction right-of-way would be restored and replanted.

These plan(s) shall be filed with the Secretary for review and approval by the Director of OEP before construction.

63. **Before construction**, Millennium shall file with the Secretary all mitigation plans for construction of the pipeline and restoration of the construction right-of-way developed with the property owners or land managers identified in table 6.2.6.1-6 in the final EIS.

64. Millennium shall prepare a detailed construction and restoration plan for construction through the Teatown Lake Reservation (Alternative mileposts 4.8 through 6.2). This plan shall be developed in consultation with the Teatown Lake Reservation and include provisions to complete construction activities (grading through restoration) at one time in the shortest time possible, with the exception of the access road that may remain open for the passage of construction equipment. Millennium shall file with the Secretary the final, site-specific plan that describes measures that will be implemented before and after construction, and includes scaled drawings identifying areas that will be disturbed within the reservation and plans for restoration plantings and reseedling within the construction work area.

65. Millennium shall prepare a detailed construction and restoration plan for construction across the New Croton Reservoir watershed. The plan shall be developed in consultation with the NYCDEP. The plan shall be consistent with the plan developed for construction and restoration through the Teatown Lake Reservation. Millennium shall file the plan with the Secretary for review and written approval of the Director of OEP **prior to construction.**

66. **Before construction,** Millennium shall file with the Secretary a dimensioned site-specific plan of the pipeline between approximate mileposts 10.5 and 11.0 of the ConEd Offset/Taconic Parkway Alternative. This plan shall show the location of the pipeline, and construction work areas, in relation to the sewer line and Todd Elementary School.